

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 24

SOUTHERN RAILWAY COMPANY, PETITIONER,

VS.

LOUISE PAINTER, ADMINISTRATRIX OF THE
ESTATE OF GEOFFREY L. PAINTER, DE
CEASED

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 4, 1941.

CERTIORARI GRANTED MAY 26, 1941.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 11,794

CIVIL.

**SOUTHERN RAILWAY COMPANY, A CORPORATION,
APPELLANT,**

vs.

**ETHEL PAINTER, ADMINISTRATRIX OF THE
ESTATE OF GEOFFREY L. PAINTER,
DECEASED, APPELLEE.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MISSOURI.**

FILED JULY 29, 1940.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the November Term, 1940, of said Court, before the Honorable Archibald K. Gardner, the Honorable Joseph W. Woodrough and the Honorable Harvey M. Johnsen, Circuit Judges.

Attest:

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the twenty-ninth day of July, A. D. 1940, a transcript of record pursuant to an appeal taken from the District Court of the United States for the Eastern District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the Southern Railway Company, a corporation, was Appellant and Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, was Appellee, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

[fol. 1] Notice of Appeal to the Circuit Court of Appeals
Under Rule 73 (B).

(Filed July 10, 1940.)

In the District Court of the United States for the Eastern
Division of the Eastern Judicial District of Mis-
souri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,
No. 300. vs. Court Room No. 3.
Southern Railway Company, a Corporation, Defendant.

Notice Is Hereby Given that Southern Railway Com-
pany, a corporation, defendant above named, hereby ap-
peals to the Circuit Court of Appeals for the Eighth Circuit
from the interlocutory judgment entered in this cause on
July 10th, A. D. 1940, granting, on motion of plaintiff above
named, a preliminary injunction, as set forth in said judg-
ment, against the defendant above named.

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,
E. C. HARTMAN,
506 Olive Street,
St. Louis, Missouri.

BRUCE A. CAMPBELL,
KRAMER, CAMPBELL,
COSTELLO & WIECHERT,
606-618 First National Bank Bldg.,
East St. Louis, Illinois.
Attorneys for Defendant.

Service of the above notice is hereby acknowledged this 10th day of July, 1940.

MARK D. EAGLETON and
ROBERTS P. ELAM,
By Roberts P. Elam,
Attorneys for Plaintiff.

[fol. 2] Complaint.

(Filed Aug. 31, 1939.)

In the District Court of the United States Within and for
the Eastern Division of the Eastern Judicial Dis-
trict of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,

306 vs. Court No. 3.

Southern Railway Company, a Corporation, Defendant.

Plaintiff, for her cause of action, states:

1. That jurisdiction is founded on the existence of a federal question arising under particular statutes. The action arises under the act of April 22, 1908, c. 149, 35 Stat. 65, as amended; 45 U.S.C.A., sec. 51-59, as hereinafter more fully appears.

2. That plaintiff is the duly appointed, qualified and acting Administratrix of the Estate of Geoffrey L. Painter, deceased, under and by virtue of her appointment by the Probate Court at Knox County, Tennessee, and as such administratrix, plaintiff institutes and prosecutes this suit on behalf of the surviving widow and dependent minor children (hereinafter specifically named) of Geoffrey L. Painter, deceased, pursuant to the laws of the United States of America in such case made and provided, and particularly those laws known as the Federal Employers' Liability Act (45 U.S.C.A., sections 51-59).

[fol. 3] 3. That at all times herein mentioned defendant was, and now is, a corporation duly organized and existing under and by virtue of law, and engaged in the business of operating a railroad system as a common carrier of goods, freight and passengers for hire between the various states of the United States of America, and that defendant owned,

operated, maintained and controlled railroad properties, lines, tracks, roadbeds, trains, engines and cars for such purposes.

4. That on or about the 3rd day of February, 1939, and for a long time prior thereto, Geoffrey L. Painter was a fireman in the employ of defendant, and was, on said date, engaged in the usual course of his employment as such fireman upon one of the defendant's railroad trains, then and there being operated by defendant (its agents, servants and employees other than said Geoffrey L. Painter) in interstate commerce between Bulls Gap, Tennessee and Ashville, North Carolina.

5. That on or about the said 3rd day of February, 1939, while defendant was operating said train as aforesaid, and while defendant and said Geoffrey L. Painter were engaged in interstate commerce and transportation, defendant (its agents, servants and employees other than said Geoffrey L. Painter) negligently caused, suffered and permitted said train to be derailed and wrecked at or near the town of Paint Pock, State of North Carolina, directly thereby causing said Geoffrey L. Painter to be crushed and mangled by the parts of the locomotive and cars of the said train [fol. 4] and to sustain fatal injuries whereof he then and there died.

6. That plaintiff does not know, and has no means of knowing the cause of the aforesaid derailment and wrecking of said train; that said train, the parts thereof, the tracks, roadbed and appliances thereof (over which the said train was being operated) were within the exclusive custody and control of defendant (its agents, servants and employees other than the said Geoffrey L. Painter).

7. Plaintiff further states that at the time of the death of said Geoffrey L. Painter, as aforesaid, he left surviving him his widow, Ethel Painter, and four minor dependent children, to-wit: John Painter, then of the age of fifteen years; James Painter, then of the age of nine years; Janet Painter, then of the age of nine years; and Elizabeth Painter, then of the age of six years; that, prior to his death, said Geoffrey L. Painter was a strong, able-bodied, industrious man in good health, capable of earning and actually earning approximately One Hundred Ninety Dollars

(\$190.00) per month, and with good prospects of advancement.

8. That, as a direct and proximate result of the death of said Geoffrey L. Painter, his surviving widow has been deprived of the pecuniary benefits, support, maintenance and assistance, and his minor children have been deprived of the teaching, education, maintenance, support, assistance and training, which the said Geoffrey L. Painter would otherwise have rendered unto them; all to their injury and [fol. 5] damage, and to the injury and damage of plaintiff as their representative herein, in the sum of Seventy Thousand Dollars (\$70,000.00).

9. Wherefore, plaintiff prays judgment in the sum of Seventy Thousand Dollars (\$70,000.00), together with her costs herein.

MARK D. EAGLETON,
1020 Telephone Bldg., St. Louis, Mo.,
Attorney for Plaintiff.

Plaintiff demands a trial by jury in this cause.

MARK D. EAGLETON,
Attorney for Plaintiff.

[fol. 6]

Summons.

District Court of the United States for the Eastern
District of Missouri, Eastern Division.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, deceased, Plaintiff,

Civil Action File No. 300. vs.

Southern Railway Company, a Corporation, Defendant.

To the above named Defendant:

You are hereby summoned and required to serve upon Mark D. Eagleton, Esq., plaintiff's attorney, whose address is 1020 Telephone Bldg., St. Louis, Mo., an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive

of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAS. J. O'CONNOR,
Clerk of Court,
By Ruby Barham,
Deputy Clerk.

(Seal of Court)

Date: August 31, 1939.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 7]

Return on Service of Writ.

I hereby certify and return, that on the 1st day of September, 1939, I received the within summons and executed the same by serving it on the within-named Southern Railway Company, a corporation, by delivering a true and correct copy of Summons and petition as furnished by the Clerk of the Court to B. F. Harris, Superintendent of Terminals of the within-named Southern Railway Company, no higher officers being present at time of service, on the 5th day of September, 1939, at St. Louis, Missouri.

WILLIAM B. FAHY,
United States Marshal.
By L. S. Davison,
Deputy United States Marshal.

721 Olive St.

Marshal's Fees

Travel	\$.06	
Service	4.00	1 mile
	<hr/> 4.06	

Received U. S. Marshal's Office Sep. 1, 1939, St. Louis, Mo.

(Endorsed): Filed in U. S. District Court on September 8, 1939.

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

[fol. 8]

Answer.

(Filed Sept. 25, 1939.)

In the District Court of the United States Within and for
the Eastern Division of the Eastern Judicial Dis-
trict of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,

No. 300. vs. Court No. 3.

Southern Railway Company, a corporation, Defendant.

Comes now the defendant in the above-entitled cause and
for its answer to plaintiff's complaint, admits:

1. That the defendant at all times mentioned in
plaintiff's complaint was, and now is, a corporation en-
gaged in the business of operating a railroad system as a
common carrier of goods, freight and passengers for hire
between the various states of the United States, and that
defendant owned, operated, maintained and controlled
railroad properties, lines, tracks, and other equipment for
such purposes.

2. That on or about February 3, 1939, and for some time
prior thereto, Geoffrey L. Painter was a fireman in the
employ of the defendant, and was on said date engaged
in the usual course of his employment as such fireman upon
one of the defendant's railroad trains, then and there being
operated by defendant in interstate commerce between Bulls
Gap, Tennessee and Ashville, North Carolina.

3. That on or about February 3, 1939, said train became
[fol. 9] derailed, and said Geoffrey L. Painter's death was
directly caused thereby.

4. Further answering, defendant states that it is with-
out knowledge or information sufficient to form a belief as
to the truth of the allegations contained in paragraphs 2,
7, and 8, of plaintiff's complaint, to the effect that plaintiff
is the duly appointed administratrix of the estate of Geof-
frey L. Painter, deceased, under and by virtue of an alleged
appointment of the Probate Court of Knox County, Ten-
nessee, and to the effect that said Geoffrey L. Painter left
surviving him his widow, Ethel Painter, and four minor
dependent children.

5. Further answering, defendant denies each and every other allegation in said complaint contained.

Wherefore, having fully answered, defendant prays to be hence dismissed with its costs.

KRAMER, CAMPBELL, COSTELLO &
WEICHERT,
FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,
E. C. HARTMAN,

Attorneys for Defendant.

[fol. 10] Amended Complaint.

(Filed Mar. 8, 1940.)

In the District Court of the United States Within and for
the Eastern Division of the Eastern Judicial Dis-
trict of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,

No. 300. vs. Court No. 3.

Southern Railway Company, a corporation, Defendant.

Plaintiff, for her cause of action, states:

1. That jurisdiction is founded on the existence of a federal question arising under particular statutes. The action arises under the Act of April 22, 1908, c. 149, 35 Stat. 65, as amended; 45 U. S. C. A., sec. 51-59, as hereinafter more fully appears.

2. That plaintiff is the duly appointed, qualified and acting Administratrix of the Estate of Geoffrey L. Painter, deceased, under and by virtue of her appointment by the Probate Court at Knox County, Tennessee, and as such administratrix, plaintiff institutes and prosecutes this suit on behalf of the surviving widow and dependent minor children (hereinafter specifically named) of Geoffrey L. Painter, deceased, pursuant to the laws of the United States of America in such case made and provided, and particularly those laws known as the Federal Employers' Liability Act (45 U. S. C. A., sections 51-59).

[fol. 11] 3. That at all times herein mentioned defendant was, and now is, a corporation duly organized and existing under and by virtue of law, and engaged in the business of operating a railroad system as a common carrier of goods, freight and passengers for hire between the various states of the United States of America, and that defendant owned, operated, maintained and controlled railroad properties, lines, tracks, roadbeds, trains, engines and cars for such purposes.

4. That on or about the 3rd day of February, 1939, and for a long time prior thereto, Geoffrey L. Painter was a fireman in the employ of defendant, and was, on said date, engaged in the usual course of his employment as such fireman upon one of the defendant's railroad trains, then and there being operated by defendant (its agents, servants and employees other than said Geoffrey L. Painter) in interstate commerce between Bulls Gap, Tennessee and Ashville, North Carolina.

5. That on or about the said 3rd day of February, 1939, while defendant was operating said train as aforesaid, and while defendant and said Geoffrey L. Painter were engaged in interstate commerce and transportation, defendant (its agents, servants and employees other than the said Geoffrey L. Painter) negligently caused, suffered and permitted said train to be derailed and wrecked at or near the town of Paint Rock, State of North Carolina, directly thereby causing said Geoffrey L. Painter to be crushed and mangled by the parts of the locomotive and cars of the said train and to sustain crushing injuries which caused the said Geoffrey L. Painter to suffer severe conscious pain and suffering of body and anguish of mind until he died on the date and at [fol. 12] the place aforesaid, approximately one hour after sustaining said injuries.

6. That plaintiff does not know the cause of the aforesaid derailment and wrecking of said train; that said train, the parts thereof, and tracks, roadbed and appliances thereof (over which the said train was being operated were within the exclusive custody and control of defendant (its agents, servants and employees other than the said Geoffrey L. Painter).

7. Plaintiff further states that at the time of the death of the said Geoffrey L. Painter, as aforesaid, he left surviving him his widow, Ethel Painter, and four minor dependent children, to-wit: John Painter, then of the age of fifteen years; James Painter, then of the age of nine years; Janet Painter, then of the age of nine years; and Elizabeth Painter, then of the age of six years; that, prior to his death, said Geoffrey L. Painter was a strong, able-bodied, industrious man in good health, capable of earning and actually earning approximately One Hundred Ninety Dollars (\$190.00) per month, and with good prospects of advancement.

8. That, as a direct and proximate result of the conscious pain and suffering of body and anguish of mind endured by the said Geoffrey L. Painter, he was damaged and his cause of action for said damages survives and is vested in the plaintiff herein; that, as a direct and proximate result of the death of said Geoffrey L. Painter, his surviving widow has been deprived of the pecuniary benefits, support, maintenance and assistance, and his minor children have been deprived of the teaching, education, maintenance, support, assistance, advice and training which the said Geoffrey L. Painter would otherwise have rendered unto them; all to [fol. 13] the injury and damage of said Geoffrey L. Painter, his surviving widow and his surviving minor children, and to the injury and damage of plaintiff as his personal representative herein, in the sum of Seventy Thousand Dollars (\$70,000.00).

9. Wherefore, plaintiff prays judgment in the sum of Seventy Thousand Dollars (\$70,000.00), together with her costs herein.

MARK D. EAGLETON,
Attorney for Plaintiff.

[fol. 14] Defendant's Motion to Make Definite and Certain.

(Filed Mar. 18, 1940.)

Comes now defendant and moves the Court to order that the following portion of plaintiff's amended petition found in lines 22 through 25, on Page 2, namely:

* * * * defendant (its agents, servants and employees other than the said Geoffrey L. Painter) negligently caused, suffered and permitted said train to be derailed and wrecked
* * * *

be made definite and certain by requiring plaintiff to set out specifically the alleged negligence of defendant, for the reason that said allegation as it now stands is so indefinite and uncertain that the precise nature of the charge is not apparent; that defendant is unable to prepare its responsive pleading, or to prepare for trial; and the situation, facts, and circumstances are such that plaintiff is not entitled to the benefit of the doctrine of *res ipsa loquitur*.

KRAMER, CAMPBELL, COSTELLO &
WIECHERT,
FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,
E. C. HARTMAN.

Copy of within motion mailed to plaintiff's attorney this 18th day of March, 1930.

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN.

[fol. 15] Answer to Plaintiff's First Amended Complaint.

(Filed April 12, 1940.)

Comes now the defendant in the above entitled cause and for its answer to plaintiff's first amended complaint, admits:

1. That the defendant at all times mentioned in plaintiff's first amended complaint was, and now is, a corporation engaged in the business of operating a railroad system as a common carrier of goods, freight and passengers for hire between the various states of the United States, and that defendant owned, operated, maintained and controlled railroad properties, lines, tracks, and other equipment for such purposes.

2. That on or about February 3, 1939, and for some time prior thereto, Geoffrey L. Painter was a fireman in the employ of the defendant, and was on said date engaged

in the usual course of his employment as such fireman upon one of the defendant's railroad trains, then and there being operated by defendant in interstate commerce between Bulls Gap, Tennessee and Ashville, North Carolina.

3. That on or about February 3, 1939, said train became [fol. 16] derailed, and said Geoffrey L. Painter's death was directly caused thereby.

4. Further answering, defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2, 7, and 8, of plaintiff's first amended complaint, to the effect that plaintiff is the duly appointed administratrix of the estate of Geoffrey L. Painter, deceased, under and by virtue of an alleged appointment of the Probate Court of Knox County, Tennessee, and to the effect that said Geoffrey L. Painter left surviving him his widow, Ethel Painter, and four minor dependent children.

5. Further answering defendant states that the death of said Geoffrey L. Painter was caused by his own negligence directly contributing thereto in that he failed to exercise ordinary care for his own safety under the circumstances.

6. Further answering, defendant states that the risk of said derailment referred to in plaintiff's amended complaint and the effects thereof were assumed by said Geoffrey L. Painter.

7. Further answering, defendant denies each and every other allegation in said amended complaint contained.

Wherefore, having fully answered, defendant prays to be hence dismissed with its costs.

KRAMER, CAMPBELL, COSTELLO
& WEICHERT,

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,

E. C. HARTMAN,

Attorneys for Defendant.

Copy mailed to plaintiff's attorney this 12th day of April, 1940.

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,

Attorneys for Defendant.

[fol. 17] (Notice to Defendant of Presentment to Court of Supplemental Complaint for Relief to Preserve Jurisdiction of Court and Service.)

(Received and Filed June 21, 1940.)

In The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

To the above-named defendant, Southern Railway Company, a corporation, or Fordyce, White, Mayne, Williams and Hartman, E. C. Hartman and Kramer, Campbell, Costello and Weichert, its attorneys of record in the above entitled cause:

Please Take Notice that on the 7th day of June, 1940, at 10:00 o'clock a. m., or as soon thereafter as counsel may be heard, the above named plaintiff will file in and present to the District Court of the United States for the Eastern Division of the Eastern ~~Judicial~~ District of Missouri, in Court Room No. 3 thereof, at the United States Courthouse and Customhouse, in the City of St. Louis, State of Missouri, her Supplemental Complaint For Relief To Preserve The Jurisdiction of said District Court of the United States, a copy of which said Supplemental Complaint is hereto attached; that plaintiff, at said time and place, will move said District Court of the United States for an order directing that you, the said defendant, and all persons acting by, under and through you, refrain from in any way doing any matter or thing tending to interfere with the jurisdiction of said District Court of the United States, or with the prosecution by this plaintiff in said District Court of the United States of her cause of action against you, the defendant, for injuries sustained by the above-named deceased, Geoffrey L. Painter, and his subsequent death, as set forth in the original complaint and first amended complaint filed in the above entitled cause in said District Court of the United States; that plaintiff, at said time and place, will further move said District Court of the

United States for an order enjoining and directing you to dismiss and set at naught that certain proceeding and action pending in the Chancery Court of Knox County, State of Tennessee, wherein you, the said Southern Railway Company, are complainant, and this plaintiff, Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, Deceased, and individually in her own right, is defendant, in and by which said action it is sought to enjoin and restrain this plaintiff, Ethel Painter, as administratrix aforesaid and individually in her own right, as defendant named therein, from prosecuting and maintaining the cause of action for the death of said Geoffrey L. Painter, deceased, alleged in the original complaint and the first amended complaint filed in said District Court of the United States in the above entitled cause; and that said motions will be based on all the files, pleadings and proceedings herein, on the verified supplemental complaint hereto attached, and on the papers, documents and proceedings referred to therein.

Dated at St. Louis, Missouri, this 6th day of June, 1940.
(Seal)

MARK D. EAGLETON,
Attorney for Plaintiff,
1004 Telephone Building,
St. Louis, Missouri.

Receipt of a copy of the above and foregoing Notice, together with a copy of the Supplemental Complaint therein referred to thereto attached, is hereby acknowledged this 6th day of June, 1940 at 3:50 P. M.

FORDYCE, WHITE, MAYNE,
E. C. HARTMAN,

WILLIAMS & HARTMAN,
By E. C. Carpentier,

Attorneys for Defendant, Southern Railway Company, a Corporation.

KRAMER, CAMPBELL, COSTELLO
& WIECHERT.

[fol. 19]

Affidavit of Service.

State of Missouri,

City of St. Louis—ss.:

John C. Casey, of lawful age, being duly sworn, upon his oath states that he served the within Notice, and a copy of the Supplemental Petition therein referred to thereto attached (including copies of the Exhibits to said petition) upon the within named attorneys, Kramer, Campbell, Costello & Weichert, in the City of East St. Louis, County of St. Clair, State of Illinois, on the 6th day of June, 1940, by leaving a true copy of said Notice, Supplemental Petition, and Exhibits at the office of said attorneys Kramer, Campbell, Costello & Weichert located in the First National Bank Building in said city, county and state, with Dolores Neil, she being the clerk of said attorneys in charge of their said office at said time.

JOHN C. CASEY.

Subscribed and sworn to before me this 6th day of June,
1940.

My Commission expires: June 30, 1943.

(Notarial Seal)

OLIVER F. ERBS.

Notary Public.

[fol. 20] Supplemental Complaint for Relief to Preserve
the Jurisdiction of This Court Over This Cause.

(Received and Filed June 21, 1940.)

In The District Court of the United States for the Eastern
Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

Comes now the plaintiff in the above entitled cause and
files this, her supplemental complaint, and for cause of ac-
tion thereunder states:

I.

That on or about the 3rd day of February, 1939, the
above named decedent, Geoffrey L. Painter, a citizen and

resident of the County of Knox, State of Tennessee, while employed by defendant as a railroad locomotive fireman, met with severe injuries at or near the town of Paint Rock, County of Madison, State of North Carolina, which resulted in his death there on said day; that, thereafter, this plaintiff was duly appointed by the Probate Court of Knox County, State of Tennessee, as Administratrix of the Estate of said Geoffrey L. Painter, deceased, and brought this action in this Court to recover damages for and in behalf of the surviving widow, minor dependent children, and the estate of said Geoffrey L. Painter, for his said injury and death, as will more fully appear from the original complaint and first amended complaint filed in this cause, which are on file in the office of the Clerk of the United States [fol. 21] District Court, Eastern District of Missouri, and which are hereby specifically referred to for a more particular statement as to the grounds for said cause or action.

II.

That, after the filing of the original complaint herein, summons was duly issued and served upon defendant, Southern Railway Company herein, and said defendant filed its answer to said original complaint; that, thereafter, by leave of Court first had and obtained, plaintiff duly filed her first amended complaint herein, defendant filed its answer to said first amended complaint, and such proceedings were had that said cause was placed on the calender of causes for trial, and set for trial on May 20, 1940, but was by the Court, of the Court's own motion, continued from said setting and reset for trial on July 8, 1940.

III.

That in the plaintiff's original complaint, and in plaintiff's first amended complaint, filed in this cause it was specifically alleged, and in the answers to said complaints filed by defendant herein it was specifically admitted, that, at the time said decedent, Geoffrey L. Painter, met with his said injuries so resulting in his death, defendant was a common carrier by railroad engaged in interstate commerce, and decedent was engaged in interstate commerce in the scope and course of his employment by defendant.

IV.

That, by plaintiff's original complaint filed herein on August 31, 1939, and by plaintiff's first amended complaint filed herein on March 8, 1949, it was, and is, alleged:

"1. That jurisdiction is founded on the existence of a federal question arising under particular statutes. The action arises under the Act of April 22, 1908, c. 149, 35 Stat. 65, as amended; 45 U. S. C. A., sec. 51-59, as hereinafter more fully appears."

[fol. 22]

V.

That, by the answer to plaintiff's original complaint filed by the defendant herein, and by the answer to plaintiff's first amended complaint filed by the defendant herein, the aforesaid allegation was admitted, because not denied.

VI.

That this plaintiff, Ethel Painter, as an individual and in her own right, is and was a citizen and resident of the City of Knoxville, Knox County, State of Tennessee, and is a proper and necessary witness in said cause or action alleged in the original complaint and the first amended complaint filed in this cause in this Court, and whose testimony is and will be material and pertinent to the issues in said cause.

VII.

That the defendant, Southern Railway Company, a corporation, now is, and at all times herein mentioned was, a railway corporation organized and existing under the laws of the State of Virginia, a citizen and resident of the State of Virginia, with its principal office in the City of Richmond, State of Virginia, and maintaining and operating railway lines in and through the states of Virginia, North Carolina, Tennessee, Illinois, and possibly other of the several states of the United States, doing business as an interstate common carrier by railroad in said states and in the City of St. Louis, State of Missouri, in the Eastern Division of the Eastern Judicial District of Missouri, and operating its railroad trains in and through said states and into and out of said City of St. Louis, State of Missouri.

VIII.

That, neither prior to nor since the filing of this action in this District Court of the United States, no other person, firm or corporation has brought any action, other than this one, in any State or Federal court to adjudicate the right of [fol. 23] the estate, surviving widow and surviving minor children of said Geoffrey L. Painter, or either or any of them, to recover, or the liability of defendant for, damages for said injury to and death of said decedent, Geoffrey L. Painter; and that, by reason of the facts aforesaid and under the provisions of the Act of April 22, 1908, c. 149, 35 Stat. 65, as amended (45 U. S. C. A. §§ 51-59) and particularly section 6 thereof (45 U. S. C. A. § 56), this Court had, and has, specific, complete, sole and exclusive jurisdiction of and over the cause of action herein alleged in plaintiff's original complaint and first amended complaint heretofore filed in this Court in this cause, and the parties thereto.

IX.

That, notwithstanding the facts aforesaid, on or about the 27th day of May, 1940, the defendant, Southern Railway Company, as complainant, instituted an action in the Chancery Court of Knox County, State of Tennessee, by filing its bill of complaint in equity, under the practice prevailing in said State of Tennessee, in an action wherein said Southern Railway Company, a corporation, was named as complainant, and this plaintiff, Ethel Painter, as administratrix of the Estate of Geoffrey L. Painter, deceased, and also in her own right as an individual, was named as defendant; that in and by said bill of complaint in equity so filed in said Chancery Court of Knox County, Tennessee, said Southern Railway Company prayed that the defendant named in said bill of complaint (being this plaintiff here) be restrained and enjoined from in any way prosecuting and maintaining her action or suit pending in this District Court of the United States in this cause, and from instituting or prosecuting a similar suit against said Southern Railway Company in any jurisdiction other than the State courts for Knox County, State of Tennessee, or for Madison County, State of North Carolina, or in the United

[fol. 24] States District for the Northern Division of the Eastern District of Tennessee at Knoxville, or for the Western District of North Carolina at Asheville, for the recovery of damages alleged to be due from said Southern Railway Company for the death of her intestate Geoffrey L. Painter.

X.

That, after the filing of said bill of complaint in said Chancery Court of Knox County, State of Tennessee, under the practice existing in that state, the Chancellor of said Chancery Court, on said 27th day of May, 1940, issued his fiat to the Clerk and Master of said Knox County, directing the issuance of a writ of injunction as prayed in said bill of complaint; that thereupon on said day, under the practice existing in said State of Tennessee, the said Clerk and Master of said Knox County, State of Tennessee, issued a writ of injunction as directed by said Chancellor; and that, thereafter on said 27th day of May, 1940, under the practice existing in said State of Tennessee, a subpoena to answer, corresponding to a writ of summons as generally known, and a copy of said bill of complaint attached thereto, were served upon the defendant named therein (being this plaintiff here), and there was then also served upon the defendant named therein (being this plaintiff here), a copy of said writ of injunction wherein and whereby this plaintiff was enjoined and restrained, and ordered to desist and refrain, from prosecuting and maintaining her aforesaid action theretofore, then and now pending in this District Court of the United States against the complainant named in said bill of complaint (being the Southern Railway Company, defendant in this cause in this Court), and enjoining the defendant named in said bill of complaint (being this plaintiff here) from instituting and prosecuting any similar suit against the complainant named in said bill of complaint (defendant Southern Railway Company here) in any jurisdiction [fol. 25] other than the State courts for Knox County, State of Tennessee, or for Madison County, State of North Carolina, or in the United States District Courts for the Northern Division of the Eastern District of Tennessee at Knoxville, or for the Western District of North Carolina at Asheville, for the recovery of damages al-

leged to be due for the death of her intestate, Geoffrey L. Painter.

XI.

That a copy of said bill of complaint in equity filed in said Chancery Court of Knox County, State of Tennessee, together with copies of said fiat, said writ of injunction and said subpoena to answer, as the same were attached together and served upon this plaintiff as aforesaid, are hereto attached, marked Exhibit "A", and by reference made a part hereof.

XII.

That, thereafter, said bill of complaint filed in said Chancery Court of Knox County, State of Tennessee, was amended by the complainant named therein (defendant Southern Railway Company here), and a copy of such amendment is hereto attached, marked Exhibit "B", and by reference made a part hereof.

XIII.

That the basis of the claim and complaint and equity of said Southern Railway Company in said action so brought in the Chancery Court of Knox County, State of Tennessee, as amended, is, in substance:

(a) That this plaintiff, Ethel Painter, had available to her, in which she could have prosecuted her action for injury to and death of her intestate, Geoffrey L. Painter, both State and Federal courts in the county in which she resides, and in which her deceased husband, Geoffrey L. Painter, resided prior to his death, and in the District in which said Geoffrey L. Painter's injury and death occurred:

[fol. 26] (b) That this District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in which this plaintiff has chosen to bring and maintain her said action for damages for and injury to and death of said Geoffrey L. Painter, sits at the City of St. Louis, State of Missouri, some 500 to 600 miles from the residence of the plaintiff, Ethel Painter, and farther from the county and District in which said Painter's injury and death occurred; and that said Southern Railway Company operates no lines, does only an

interstate business, and maintains no regularly employed attorneys, in said City of St. Louis, State of Missouri;

(c) That the witnesses necessary to the defense of this plaintiff's said action in this District Court of the United States reside in and near Knoxville, Tennessee, and in and about the County of Madison, North Carolina, and that the defense of plaintiff's said action by said Southern Railway Company will require said Southern Railway Company to take its witnesses from their various places of residence to the City of St. Louis, State of Missouri, and to specially employ counsel for such defense, and will, therefore, compel said Southern Railway Company to incur greater expense than if the trial of such an action was had in the county where plaintiff resides, or where the injury to and death of plaintiff's decedent, Geoffrey L. Painter, occurred;

(d) That this plaintiff, Ethel Painter, has confederated with certain attorneys and solicitors for attorneys, who maintain organizations in and about the said city of St. Louis, and possibly other cities, for the purpose of inducing persons having claims against the Southern Railway Company, and other railways of the country, to bring their suits within the City of St. Louis, Missouri;

(e) That the purpose of plaintiff, Ethel Painter, in bringing her action for damages for the injury to and [Feb. 27] death of said Geoffrey L. Painter in this District Court of the United States, "could have been but one", namely, to impose upon said Southern Railway Company a costly and oppressive defense, and to obtain improper and oppressive advantages, and avoid the laws of the State of Tennessee and the laws of North Carolina, and to compel said Southern Railway Company to submit to unreasonable and unjust demands of this plaintiff, by harassing and annoying said Southern Railway Company, and inflicting upon it unreasonable and unnecessary expense; and

(f) That the defense by Southern Railway Company of this action filed by plaintiff in this District Court of the United States, as aforesaid, will greatly burden Southern Railway Company in its work of moving interstate commerce by reason of its being required to take its witnesses

from in and near Knoxville, Tennessee, to the City of St. Louis, State of Missouri, and to require said Southern Railway Company to bear the expense thereof is to deprive it of its rights under the due process clause of the 14th Amendment to the Constitution of the United States.

XIV.

That this District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri now has, and has had since the filing of this action on August 31, 1939, full jurisdiction of this plaintiff's action herein to recover from defendant Southern Railway Company damages for the injury to and death of said Geoffrey L. Painter, and of the parties thereto, under and by virtue of the laws of the United States of America in such cases made and provided.

XV.

That this plaintiff has the absolute right, under the Constitution and laws of the United States in such cases made and provided, to institute and prosecute, in this District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, her said action herein to recover from defendant Southern Railway Company damages for the injury to and death of said Geoffrey L. Painter.

XVI.

That this plaintiff has confederated with no attorney, solicitor for any attorney, or any other person, firm, corporation or organization, for any purpose of inducing any person having any claim against defendant, or any other railroad company, to bring any suit in the City of St. Louis, Missouri, or elsewhere, but has, as a matter of her own free and personal volition, selected and employed counsel of her own choosing to institute and prosecute her said action for injury to and death of her said decedent, against defendant Southern Railway Company, in this District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

XVII.

That the purpose of this plaintiff in bringing her said action for damages for the injury to and death of said

Geoffrey L. Painter in this District Court of the United States is a matter of no concern whatsoever to defendant, but said action was brought in this Court solely and only for the purpose of facilitating the due and proper handling of said cause by her said attorney employed by her for that purpose, to the best advantage of this plaintiff and her said attorney; that plaintiff's so instituting and maintaining her said action in this District Court of the United States does not impose upon defendant Southern Railway Company any more costly and oppressive defense, and does not impose any burden upon its work of moving interstate commerce, other than is required of it under and by the laws of the United States of America in such cases made and provided; that plaintiff's so instituting and maintaining her said action in this District Court of the United States can in no manner permit plaintiff to obtain improper or oppressive advantages, or avoid the laws of the State of Tennessee, or the laws of the State of North Carolina, because said action is governed and controled solely by the laws of the United States of America and the decisions of the Federal courts thereunder, and is in nowise governed by the law of any of the several states of the United States.

XVIII.

That this plaintiff herein is desirous of trying her cause of action for damages for said injury to and death of said Geoffrey L. Painter in this District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri; that the object of defendant herein, Southern Railway Company, to have said Chancery Court of Knox County, State of Tennessee, enjoin and restrain plaintiff from proceeding with and prosecuting her cause of action herein, and the writ of injunction issued by said Chancery Court of Knox County, State of Tennessee, as aforesaid, separately and together,

(a) Amount to an unwarranted interference and intermeddling with the jurisdiction of this Court;

(b) Arrest, impair, frustrate, destroy and defeat the proper jurisdiction of this Court;

(c) Impair, destroy, frustrate and defeat the due and proper administration of justice;

(d) Unlawfully and inequitably prevent and restrain material witnesses from testifying to matters within their knowledge, either in this Court or by deposition, in a cause pending in this Court, and of which this Court has full jurisdiction;

(e) Deprive plaintiff of an absolute right granted her by the Constitution and laws of the United States of America;

(f) Set aside and at naught the laws of the United States of America, and the provisions of the Federal Employers' Liability Act;

(g) Work an inequitable and unconscionable wrong upon the plaintiff in her said action in this District Court [fol. 30] of the United States to recover damages for the injury to and death of said Geoffrey L. Painter; and

(h) Unlawfully and inequitably interfere with the rights of this plaintiff under the Constitution and laws of the United States of America.

XIX.

That under said writ of injunction issued by said Chancery Court of Knox County, State of Tennessee, this plaintiff is restrained and enjoined from prosecuting and maintaining her action herein, in this District Court of the United States, to recover damages for the said injury to and death of said Geoffrey L. Painter; that said writ of injunction and the fiat upon which said writ of injunction were issued were, and are, made without authority of law, constitute a violation of plaintiff's rights under the Constitution and laws of the United States of America, deprive plaintiff of rights and privileges given her by the Constitution and laws of the United States of America without due process of law, and are null, void, and of no force or effect; that plaintiff is desirous of having her said cause to recover damages for the said injury to and death of said Geoffrey L. Painter tried in this Court at its next setting for trial, to-wit: on July 8, 1940; that, in order to so try said cause, plaintiff must prosecute and maintain said action, and aid and abet in its prosecution and maintenance by testifying therein, and that she cannot do so without violating said writ of injunction of said Chancery

Court of Knox County, State of Tennessee, which said writ of injunction, although wholly invalid as aforesaid, is, upon its face, valid and effective and in full force; and that this plaintiff cannot prosecute and maintain her said action for damages in this District Court of the United States, which has full, complete and exclusive jurisdiction thereof as aforesaid, without the risk of punitive action by [fol. 31] said Chancery Court of Knox County, State of Tennessee.

XX.

That this Court has jurisdiction of this proceeding by supplemental complaint, for the reason that this proceeding is ancillary to the original action brought by this plaintiff against this defendant under the laws of the United States of America in such cases made and provided in this District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri to recover damages for the injury to and death of said Geoffrey L. Painter, more specifically alleged in plaintiff's original complaint and first amended complaint herein filed as aforesaid, and is based upon and ancillary to said action for the purpose of protecting the jurisdiction of this District Court of the United States first acquired over said cause or action, and over the subject matter of, and the parties to, said action.

XXI.

That this plaintiff has no adequate remedy at law in the premises; that, if the relief prayed for in this supplemental complaint be not granted, plaintiff will suffer irreparable damage and unconscionable and inequitable wrong; and that unless said proceedings so pending in the Chancery Court of Knox County, State of Tennessee, be dismissed, this Court cannot properly exercise its jurisdiction, vested in it by the Constitution and laws of the United States of America, which has been acquired, and now exists, in said action pending herein wherein plaintiff seeks to recover damages as aforesaid.

Wherefore, plaintiff prays for an order of this Court permanently and forever enjoining the defendant Southern Railway Company, its agents and servants, and any and all persons acting by, under or through it, from in any way

[fol. 32] doing any matter or thing tending to interfere with the jurisdiction of this District Court of the United States, or with the prosecution and maintenance by this plaintiff in this District Court of the United States of her cause of action against said Southern Railway Company, a corporation, for the injury to and death of decedent, Geoffrey L. Painter, on or about the 3rd day of February, 1939, as aforesaid, alleged in plaintiff's original complaint and first amended complaint herein filed.

Plaintiff further prays and asks judgment that the defendant Southern Railway Company be enjoined and directed to dismiss and set at naught that certain proceeding and cause of action pending in the Chancery Court of Knox County, State of Tennessee, wherein said Southern Railway Company is complainant, and this plaintiff, Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, deceased, and individually in her own right, is defendant, and in and by which action it is sought to enjoin and restrain this plaintiff from prosecuting and maintaining in this District Court of the United States her said cause of action for the injury to and death of Geoffrey L. Painter, deceased, alleged in plaintiff's original complaint and first amended complaint herein filed, and for such other and further relief as to the Court may seem just and equitable in the premises.

MARK D. EAGLETON,
Attorney for Plaintiff,
1004 Telephone Bldg.,
St. Louis, Missouri.

State of Missouri,

City of St. Louis—ss.:

Mark D. Eagleton being first duly sworn, deposes and says that he is agent and attorney for the plaintiff in the above entitled cause, and, as such, has authority to make this affidavit in her behalf; that he has read and fully knows [fol. 33] the contents of the above and foregoing supplemental complaint; and that the matters and facts therein alleged are true to the best of his knowledge, information and belief.

MARK D. EAGLETON,

Subscribed and sworn to before me this 6th day of June,
1940.

(Notarial Seal)

P. R. BARRETT,
Notary Public.

My Commission expires: Sept. 4, 1943.

[fol. 34]

Exhibit "A".

(Bill of Complaint.)

To the Honorable A. E. Mitchell, Chancellor, Holding the
Chancery Court for Knox County, at Knoxville, Ten-
nessee:

Southern Railway Company, a Railway Corporation Or-
ganized Under the Laws of the State of Virginia.
Complainant.

Against

Mrs. Ethel Painter, a Citizen and Resident of Knox County,
Tenn., in Her own Right, and Also as Administra-
trix of the Estate of Geoffrey L. Painter, Deceased.
Likewise, at the Date of his Death, a Citizen and
Resident of Knox County, Tenn., Defendant.

Complainant respectfully shows to the Court:

I.

That it is a railway corporation, organized under, and
existing by virtue of the laws of the State of Virginia, and
having its principal office in the City of Richmond, Va.:
and maintaining and operating railway lines through the
[fol. 35] states of Virginia, North Carolina, and Tennessee,
and possibly other States, in accordance with the laws of
said States.

Among the lines of railway owned and operated by it, is
that extending through Knox County and from the City of
Knoxville, in Tennessee, to Asheville, in the State of North
Carolina. Over its lines, complainant is, and was, on Febru-
ary 3, 1939, engaged in the conduct of a general railway
business, operating trains, transporting freight and pas-
sengers, and generally discharging the business of a rail-
way system.

II.

The deceased, Geoffrey L. Painter, and the defendant, Ethel Painter, his wife, had been, for many years, and at the date of the death of Geoffrey L. Painter, were citizens and residents of the State of Tennessee, residing at Knoxville, in Knox County.

III.

Upon said date, February 3, 1939, the intestate, Geoffrey L. Painter, husband of defendant, Mrs. Ethel Painter, was in the employ of complainant as fireman on engine 5031, pulling one of its trains from Bulls Gap, Tennessee, to Asheville, N. C., and came to his death in an accident just beyond the North Carolina-Tennessee line, in the county of Madison, N. C. Complainant avers that the accident occurred through no fault chargeable to it.

The deceased, Geoffrey L. Painter, left surviving him as his widow, the defendant, Ethel Painter; and complainant is informed and believes, and avers as a fact, that said defendant qualified as administratrix upon his estate, in Knox County, Tennessee. He also left surviving him, certain children, some of whom are adult and married, and the names and ages of whom complainant does not deem it necessary to here set out.

The accident occurred some 75 miles from Knoxville, on its Knoxville-Asheville line, over which its crews, in and out of Knoxville, make daily runs.

At both Marshall, N. C., and in Knoxville, Tenn., are and were competent courts for the trial of defendant's claim that complainant Railway Company was and is liable for the death of deceased, and to adjudicate any litigation arising out of same, being courts maintained respectively by the States of North Carolina and the State of Tennessee. Further, United States District Courts operating for the Western District of North Carolina, sit regularly at Asheville, in Buncombe County, N. C., a county adjoining Madison County, N. C., and with judges competent, and with full jurisdiction to try any question of liability and of compensation between defendant and complainant.

Likewise, the United States District Court sits regularly in Knox County, Tenn., the county of defendant's residence,

with judges competent, and with jurisdiction to try any controversy arising out of the death of deceased.

Complainant maintains in Knox County, Tenn., Madison County and Buncombe County, North Carolina, numerous stations and agents upon whom legal process may be conveniently served, and complainant be thus brought into court. And in all of said courts, open fair and expeditious trials may be had. And in all of said counties are numerous able and well qualified attorneys, fully capable of representing defendant in any suit growing out of the death [fol. 37] of her intestate.

So that defendant had available to her, both State and Federal Courts, either in the county where she and her deceased husband had resided for some years, and resided at his death; or in the District in which the accident occurred, in Madison County, in the Western District of North Carolina, and at either point, and especially at Knoxville, complainant's headquarters, any suit arising out of the death of deceased, could be fully and fairly tried, and with convenience both to defendant, Ethel Painter, and complainant herein, Southern Railway Co.

IV.

However, defendant has brought, and is now maintaining a lawsuit against this complainant, in the District Court of the United States, within, and for the Eastern Division of the Eastern Judicial District of Missouri, at the city of St. Louis, within which state, Southern Railway Co. owns and operates no lines, and does no business, other than of an interstate character.

It is proper to say that the court in which defendant has chosen to bring her suit, is some 500 to 600 miles from the residence of Ethel Painter, and farther from the county and Federal Judicial District in which the accident occurred.

Complainant avers that the purpose of the bringing of the suit in said District Court could have been but one, namely, to impose upon this complainant a costly and oppressive defense, and to obtain improper and oppressive [fol. 38] advantages and evade laws of the state of Tennessee and the laws of the State of North Carolina, and to compel it to submit to defendant's unreasonable and unjust

demands, by harrassing and annoying it, and inflicting upon it unreasonable and excessive expense.

V.

Complainant is informed and believes, and avers as a fact, that defendant has confederated with certain attorneys and solicitors for attorneys, who maintain organizations in and about the City of St. Louis, and possibly other cities, for the purpose of inducing persons having claims against complainant and other railways of the country, to bring their suits in the City of St. Louis and State of Missouri.

Complainant avers that by bringing said suit in St. Louis, defendant hoped to evade the laws of her state, and of the State of North Carolina, and to secure the advantage of the Missouri Law, allowing nine jurors to return a verdict; and other procedural advantages. And further, defendant has sought to compel this complainant to incur the expense necessary to take its witnesses, consisting of train men, track men, surgeons, and machinists, to St. Louis, at enormous expense to itself. In order to bring its witnesses before the court at all, it will be necessary for complainant to pay much more than ordinary witness fees and costs, in order to induce the witnesses to attend court at St. Louis. They cannot be compelled to go and in order to secure the benefit of their personal presence and testimony before the jury, it will be necessary for complainant to incur very much greater expense, than if the trial was had in a court of the county where defendant resides, or where the accident occurred.

[fol. 39] In the present case, it will be necessary for complainant to take to St. Louis more than twenty witnesses, including its machinists, shopmen, engineers, trackmen, and inspectors; and this can only be done, if at all, by paying the expenses of transportation of said witnesses, and their maintenance while attending court. And in addition thereto, it would be necessary for it to pay said witnesses for the time lost while in attendance at Court.

VI.

Complainant further shows to the Court that the estate of defendant's intestate, G. L. Painter, is insolvent. Shortly prior to his death, he had filed petition in bankruptcy

in the United States District Court at Knoxville, Tenn., and this bankruptcy proceeding was pending at the date of his death.

VII.

In the event complainant should be successful in its defense, it would be wholly unable to reimburse itself for any costs and expenses to which it is put.

Further, it is impossible to say just when a trial can be had in the District Court of the United States at St. Louis. That court has the normal business growing out of a dense and active population. It is well known that it is impossible for such courts to determine whether a case will be reached on the date for which it is set. Other cases may held over, and complainant, in order to have its witnesses present, and produce their testimony in open court, may have to maintain them there for several days.

Illustrating the difficulty and the enormous expenses to which complainant is subjected in attempting to try its cases in this foreign jurisdiction, the case has already [fol. 40] been set for trial twice in the Court at St. Louis. Complainant has taken its witnesses, either all the way to St. Louis, or part of the way there, when it became apparent that the case could not be reached because of the congested condition of the docket; and on one of the occasions, as complainant is informed and believes, the case was continued by the direction of the court itself.

Complainant avers that the cost of both of these continuances probably amounts to about \$500.00; and in addition, the loss to complainant in the services of its employes has been very great indeed.

It is entirely possible that the same condition may prevail at future settings of the case.

VIII.

The taking of these witnesses to St. Louis for trial will cause great loss of time, will interfere greatly with complainant's work of handling interstate, as well as intrastate shipments, which pass, in large quantities, over its main lines, of which, that from Knoxville to Asheville is one of great importance, and greatly burden complainant in its work of moving interstate commerce.

At Knoxville, its division headquarters, or even at Asheville, or in the State Courts of Knoxville, Tenn., or Marshall, N. C., complainant's witnesses can be in attendance with comparatively little loss of time, and the case can be tried at perhaps less than one fifth the cost, which would be required to try the case in the District Court of the United States, for the Eastern Division of the Eastern Judicial District of Missouri.

[fol. 41]

IX.

Complainant avers that it is gross imposition, and extremely oppressive to require it to go this long distance to St. Louis, Missouri, to defend this controversy, which arose near Knoxville, Tenn., the residence of defendant Ethel Painter.

Complainant further avers that it is such a gross and oppressive burden upon complainant to compel it to defend, in this foreign jurisdiction, a suit that might, with less than one-fifth of the cost, be disposed of at Knoxville, Marshall or Asheville, that this court should exercise its power of injunction to restrain further prosecution of said suit at St. Louis, Missouri.

X.

Complainant avers that all material witnesses to the accident which resulted in said Geoffrey L. Painter's death, reside either in or near to the City of Knoxville, Tennessee, or in the County of Madison, North Carolina, in which the accident occurred, and which is about 75 miles from Knoxville.

It will be necessary to have present at this trial, at least two train crews, aside from several track men, inspectors, machinists, and other employees.

Both the Federal Courts for the Western District of North Carolina, and the Northern Division of the Eastern [fol. 42] District of Tennessee at Knoxville, and the State Courts for Madison County at Marshall, North Carolina, and for Knox County, Tennessee, have complete jurisdiction to try and adjudicate any claim which may arise out of the death of said Geoffrey L. Painter, and the trial of said case in St. Louis, Missouri, or at any other points far distant from these localities, is, and will be oppressive upon complainant, and impose an undue burden on inter-

state commerce. And complainant avers that to require complainant to try such case in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, is to deprive it of its rights under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

XI.

Complainant therefore prays:

(1) That the defendant, Mrs. Ethel Painter, be made defendant hereto, both in her own right, and as administratrix of Geoffrey L. Painter, deceased, and that she appear and answer this bill of complaint, but answer upon oath is expressly waived.

(2) That writ of injunction issue, inhibiting defendant from prosecuting and maintaining her suit now pending against this complainant, in the District Court of the [fol. 43] United States for the Eastern Division of the Eastern Judicial District of Missouri, at the City of St. Louis; and that defendant be enjoined from instituting and prosecuting a similar suit against this complainant, in any jurisdiction other than in the state Courts for Knox County, Tenn., or for Madison County, N. C., or in the U. S. District Courts for the Northern Division of the Eastern District of Tennessee at Knoxville, or for the Western District of North Carolina at Asheville, for recovery of damages alleged to be due for the death of her intestate, Geoffrey L. Painter.

(3) And complainant prays that all necessary proof be heard, and that upon the trial of this case, said injunction be made perpetual.

(4) And it prays for all such further and different relief as in equity it may merit, and for general relief.

This is the first application for writ of injunction in this case.

**SOUTHERN RAILWAY
COMPANY,**

By Chas. H. Smith,

Attorney.

J. A. Sasong,

Chas. H. Smith,

Solicitors.

[fol. 44] State of Tennessee,
Knox County.

J. P. Goodman makes oath that he is Claim Agent of Southern Railway Company, in charge of the litigation arising out of this accident. He is familiar with the facts averred in the foregoing bill of complaint, and the allegations of said bill, in so far as made of his own knowledge, are true, and those upon information and belief, he believes to be true.

J. P. GOODMAN.

Sworn to and subscribed before me this the 22nd day of
May, 1940.

KEILER SMITH,
Notary Public.

(Seal)

My commission expires Oct. 7, 1943.

[fol. 45] Fiat.

To the Clerk and Master of Knox County:

Issue writ of injunction as prayed in the bill upon complainant giving bond in the sum of \$1000.00 conditioned as required by law.

A. E. MITCHELL,
Clerk of Court.

[fol. 46] Subpoena to Answer at Rules.

(Summons Directed to Mrs. Ethel Painter.)

State of Tennessee
Chancery Court at Knoxville

To the Sheriff of Knox County—Greeting:

Summon Mrs. Ethel Painter, to appear before the Chancery Court, at Knoxville, on or before the First Monday of June next, to answer the original Injunction bill which Southern Railway Company have filed in said Court against Mrs. Ethel Painter.

and have you then and there this writ.

Witness, Chas. E. Dawson, Clerk and Master of our said Court, at office in Knoxville, this 27th day of May, 1940.

CHAS. E. DAWSON,

Clerk and Master,

By

Deputy C. & M.

Notice.

To the Above Named Defendant:

You are hereby notified that you are required to make defense in this cause on or before the First Monday of June next, or judgment pro confesso will be entered against you.

CHAS. E. DAWSON,

Clerk and Master,

By

Deputy C. & M.

[fol. 47] Injunction

(Summons directed to Mrs. Ethel Painter, individually, etc.)

State of Tennessee, Knox County Chancery Court at Knoxville

To the Sheriff of Knox County—Greeting:

And to Mrs. Ethel Painter, individually and as administratrix of the estate of Geoffrey L. Painter, deceased.

And to all Counselors, Attorneys, Solicitors and Agents, and to each and every one of them—Greeting:

Whereas Southern Railway Co. has lately filed original injunction bill of Complaint in said Chancery Court at Knoxville, against you, the said above named defendant to be relieved touching the matter set forth in said bill in which it is charged that above named defendant your actings and doings in the premises, are contrary to equity and good conscience, and whereas, the Honorable A. E. Mitchell, Judge of the Chancery Court at Knoxville, Tenn., in said State has ordered that an injunction issue, as prayed by complainant.

Therefore, in consideration of said fiat, and of the particular matters in said Bill set forth, you, the said and the persons before named, and each and every one of you, are hereby strictly commanded and enjoined, under the penalty of a contempt of Court, that you do absolutely desist and refrain from prosecuting and maintaining your suit now pending against complainant in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri at the City of St. Louis, and you are enjoined from instituting and prosecuting a similar suit against complainant in any jurisdiction other than the State Courts for Knox County, Tennessee, or from Madison County, North Carolina, or in the United States District Courts for the Northern Division of the Eastern District of Tennessee at Knoxville, or for the Western District of North Carolina at Asheville for recovery of damages alleged to be due for the death of her intestate, Geoffrey L. Painter, until the further order of the said Chancery Court in the premises.

Witness my hand at office, this 27th day of May A. D. 1919.

CHAS. E. DAWSON,

Clerk and Master D. C. & M.

{fol. 48}

Exhibit "B"

In the Chancery Court for Knox County, Tenn.

Southern Railway Company,

vs.

Mrs. Ethel Painter, Admx.

Upon motion of the complainant, and it appearing to the Court that the defendant has not yet answered the bill filed against her in the above styled cause, it is hereby ordered that complainant may amend its said bill by adding to paragraph V thereof the following averment, to-wit:

"Further, complainant does not maintain regular employed attorneys at St. Louis as it does in Tennessee, and it will be necessary for it to specially employ counsel whose compensation will add greatly to the cost of defense, and which expense would not be incurred in Tennessee."

It is further ordered that said amendment may be made and shall be treated as made upon the face of the bill.

Approved for Entry:

.....
Chancellor.

[fol. 49] Notice of Motion For Injunction.

(Filed June 20, 1940.)

In the District Court of the United States For the Eastern
Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey
L. Painter, Deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

To: The above named defendant, Southern Railway Com-
pany, a corporation; or Fordyce, White, Mayne, Wil-
liams & Hartman; E. C. Hartman; and Kramer,
Campbell, Costello & Wiechert, its attorneys of rec-
ord in the above entitled cause:

Please Take Notice that on the 1st day of July, 1940,
at 10 o'clock A. M., or as soon thereafter as counsel may
be heard, in the District Court of the United States for
the Eastern Division of the Eastern Judicial District of
Missouri, in court room 3 thereof, at the United States
Court House and Customs House, 1114 Market Street, in
the City of St. Louis, Missouri, upon the verified suppl-
emental complaint in the above entitled cause, and upon all
the files, pleadings and proceedings herein, and upon the
papers, documents and proceedings referred to therein, a
motion will be made and presented to the Court by plaintiff
for a preliminary injunction against the defendant herein
in accordance with the prayer of said supplemental com-
plaint, and for such other or further relief in the premises
as to the Court may seem just and proper. A copy of said
[fol. 50] motion is served upon you herewith.

Dated at St. Louis, Missouri, this 20th day of June, 1940.

MARK D. EAGLETON,

Attorney and Solicitor for Plaintiff.

I hereby certify that I served the above and foregoing notice of motion for injunction upon the defendant, Southern Railway Company, on the 20th day of June, 1940, by mailing copies thereof to its attorneys at their addresses as follows:

Fordyce, White, Mayne, Williams & Hartman,
506 Olive Street,
St. Louis, Missouri;

E. C. Hartman,
506 Olive Street,
St. Louis, Missouri;

Kramer, Campbell, Costello & Wiechert,
First National Bank Building,
East St. Louis, Illinois.

MARK D. EAGLETON,
Attorney and Solicitor for Plaintiff.

[fol. 51] Motion For Injunction.

(Filed June 20, 1940.)

In the District Court of the United States For the Eastern
Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey
L. Painter, Deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

Now comes Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased, the plaintiff in the above entitled cause, by Mark D. Eagleton, her attorney and solicitor, and moves the Court to grant a writ of injunction against the defendant, its agents and servants, and any and all persons acting by, under or through it, pending this suit, and until the further order of the Court, conformable to the prayer of the supplemental complaint in this cause filed.

MARK D. EAGLETON,
Attorney and Solicitor for Plaintiff.

I hereby certify that I served the above and foregoing motion upon the defendant, Southern Railway Company, on the 20th day of June, 1940, by mailing copies thereof to its attorneys at their addresses as follows:

Fordyce, White, Mayne, Williams & Hartman,
506 Olive Street,
St. Louis, Missouri;

E. C. Hartman,
506 Olive Street,
St. Louis, Missouri;

Kramer, Campbell, Costello & Wiechert,
First National Bank Building,
East St. Louis, Illinois.

MARK D. EAGLETON,
Attorney and Solicitor for Plaintiff.

[fol. 52] Temporary Restraining Order.

(Received, Filed & Entered June 21, 1940.)

In the District Court of the United States For the Eastern
Division of the Eastern District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey
L. Painter, deceased, Plaintiff,
No. 300. vs.

Southern Railway Company, a Corporation, Defendant.

Whereas, in the above entitled cause, on June 7, 1940, after notice thereof having been duly given defendant, plaintiff and defendant appeared and plaintiff requested leave to file a verified supplemental complaint praying for a preliminary and permanent injunction and further requesting the issuance of a temporary injunction but the Court not being fully advised took the request for a temporary injunction under advisement and requested the parties to submit authorities, and now upon examination of the authorities submitted and the briefs of counsel it appearing that the facts stated in the verified supplemental complaint if sustained will warrant relief and it further appearing from said verified supplemental complaint that there is danger of immediate and irreparable injury, loss or damage being caused to the plaintiff before a hearing can be

had thereon, unless said defendant is, pending such hearing, restrained as herein set forth, for the reason that the defendant's institution and prosecution of an injunction proceeding against plaintiff in the Chancery Court of Knox County, State of Tennessee, wherein and whereby plaintiff was and is enjoined and restrained from prosecuting and maintaining her action under the Federal Employers' Liability Act in this Court in this cause, deprives plaintiff of a federal right specifically granted her by the laws of the United States, and interferes with, impairs, arrests and tends to frustrate and defeat the jurisdiction of this Court of and over plaintiff's said action under the Federal Employers' Liability Act herein, and [fol. 53] of and over the subject-matter thereof and the parties thereto; and,

Whereas, notice was duly given defendant that plaintiff would move the Court for a restraining order herein upon the filing of said verified supplemental complaint, and the Court having heard counsel thereon at the time of the filing of said supplemental complaint,

Now, Therefore, take notice that you, Southern Railway Company, a corporation, defendant herein, your agents, servants, attorneys, counselors, or anyone acting by, through or for you, are hereby temporarily restrained and enjoined from:

1. In any way interfering, or in any way doing any matter or thing tending to interfere, with the liberty of the plaintiff, Ethel Painter, as administratrix of the estate of Geoffrey L. Painter, deceased, in carrying on, prosecuting and maintaining that certain action under the Federal Employers' Liability Act, for injury to and death of her said decedent which occurred on or about the 3rd day of February, 1939, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff, vs. Southern Railway Company, a Corporation, Defendant";

2. In any way interfering, or in any way doing any matter or thing tending to interfere, with the jurisdiction of this Court of and over said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix

of the Estate of Geoffrey L. Painter, Deceased, Plaintiff, vs. Southern Railway Company, a Corporation, Defendant," or with the jurisdiction of this Court of and over the subject-matter thereof or the parties thereto;

3. Taking any except dismissal proceedings in that certain action pending in the Chancery Court of Knox County, State of Tennessee, wherein said Southern Railway Company, a corporation, is complainant, and the plaintiff herein, Ethel Painter, as administratrix of the estate of Geoffrey L. Painter, deceased, and in her own right as an individual, is defendant, and wherein it is sought to enjoin and restrain said Ethel Painter, as administratrix aforesaid and individually in her own right, from prosecuting and maintaining said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff, vs. Southern Railway Company, a Corporation, Defendant."

This restraining order shall become effective upon filing and entry, and the giving of security by the plaintiff, by filing a bond in the sum of \$250.00, to be approved by the Clerk of this Court, or by depositing the sum of \$250.00 with the Clerk of this Court, for the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained hereby.

This restraining order will remain in force only until the hearing and determination of the motion for a preliminary injunction herein. The matter of the issuance of a preliminary injunction is hereby set down for hearing on the 1st day of July, 1940, at 10:00 o'clock in the forenoon, at the United States Court House and Customs House in the City of St. Louis, Missouri, and said defendant is hereby notified of said hearing.

It is further ordered that a copy of this order certified upon the hand of the Clerk and the seal of this Court be served upon the defendant, Southern Railway Company, a corporation.

Signed and issued on 9th day of June, 1940, at 2:00 o'clock P. M.

J. C. COLLET,
United States District Judge.

\$250.00 cash deposited by Mard D. Eagleton, atty for plaintiff June 21, 1940 pursuant to within temporary restraining order.

JAMES J. O'CONNOR,
Clerk.

[fol. 55] Motion To Dismiss.

(Filed June 24, 1940.)

Comes now defendant and moves the court to dismiss plaintiff's supplemental complaint for the following reasons:

(1) Because the Court lacks jurisdiction over the subject matter thereof; and

(2) Because said supplemental complaint fails to state a claim upon which relief can be granted.

KRAMER, CAMPBELL, COSTELLO &
WIECHERT,

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,
E. C. HARTMAN,

Attorneys for Defendant.

Copy mailed to plaintiff's attorneys this 24th day of June, 1940.

E. C. HARTMAN,
Attorney for Defendant.

[fol. 56] Findings of Fact and Conclusions of Law.

(Filed July 10, 1940.)

In the District Court of the United States Within and for
the Eastern Division of the Eastern Judicial Dis-
trict of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

The above entitled cause came on for hearing upon the plaintiff's motion for a preliminary injunction, in the above entitled Court, Honorable J. C. Collet, Judge of said Court, presiding, on the 1st day of July, 1940, and both parties to said cause appearing and being represented by their counsel, and the Court having duly considered said motion, the plaintiff's verified supplemental complaint, and the files, pleadings and proceedings in this cause; and the Court having heard the arguments of counsel, and being fully advised in the premises, finds the following:

Findings of Fact.

I.

The defendant, Southern Railway Company, a corporation organized and existing under the laws of the State of Virginia, and a citizen and resident of that State, was and is a common carrier by railroad engaged in interstate commerce in various of the several states of the United States, [fol. 57] and doing business as such common carrier in the City of St. Louis, State of Missouri, in the Eastern Division of the Eastern Judicial District of Missouri, and operating its railroad trains in, into and out of said City of St. Louis.

II.

On February 3, 1939, one Geoffrey L. Painter, a citizen and resident of the City of Knoxville, County of Knox, State of Tennessee, while in the course of his employment by the defendant as a locomotive fireman on one of defendant's interstate trains, and while engaged in interstate commerce and transportation, sustained injuries causing his death as a direct result of the derailment of said train at or

near the town of Paint Rock, County of Madison, State of North Carolina, and left surviving him his wife, Ethel Painter, and several minor dependent children.

III.

Thereafter, said Ethel Painter, also a citizen and resident of the City of Knoxville, County of Knox, State of Tennessee, was duly appointed Administratrix of the Estate of Geoffrey L. Painter, Deceased, by the Probate Court of Knox County, Tennessee, and, on August 31, 1939, as such administratrix, filed an action in this Court (being the primary action in this cause in this Court), under the Federal Employers' Liability Act (45 U. S. C. A. §§ 51-59), to recover from said Southern Railway Company damages for the injuries to and death of her decedent, for the benefit of his surviving widow, his surviving minor dependent children, and his estate. Summons was duly issued and served upon the defendant, Southern Railway Company, in said action, and said defendant duly appeared and filed its answer to plaintiff's complaint in said action, without challenge to the jurisdiction of this Court by said answer or otherwise. The matter, after various proceedings in said action, and at a time when issue had been joined upon the pleadings in said action, said action was set for trial on May 20, 1940, but was continued by the Court of the Court's own motion, and reset for trial on July 8, 1940.

IV.

Ethel Painter, as administratrix aforesaid and individually in her own right, is a proper and necessary witness at the trial of her said action under the Federal Employers' Liability Act pending in this Court in this cause, and her testimony as to facts within her knowledge is and will be pertinent and material to the issues involved in said action.

V.

Thereafter, on May 27, 1940, the defendant herein, Southern Railway Company, filed its bill of complaint in the Chancery Court of Knox County, State of Tennessee, wherein said Southern Railway Company was named as complainant, and said Ethel Painter, as administratrix aforesaid and individually in her own right, was named as defendant, and said Southern Railway Company then secured

upon its said bill of complaint a writ of injunction whereby said Ethel Painter, as administratrix aforesaid and individually in her own right, was restrained and enjoined, and compelled to desist and refrain, under penalty of a contempt of said Chancery Court, from in any manner further prosecuting or maintaining her said action under the Federal Employers' Liability Act in this Court in this cause, and was further enjoined from instituting and prosecuting a similar action against the Southern Railway Company in any jurisdiction other than the state or federal courts in [fol. 59] the City of Knoxville, County of Knox, State of Tennessee, or the state or federal courts having jurisdiction over the County of Madison, State of North Carolina. Copies of said bill of complaint filed in, and said writ of injunction issued by, said Chancery Court of Knox County, Tennessee, together with process requiring answer to said bill of complaint, were duly served upon said Ethel Painter on said 27th day of May, 1940. The said bill of complaint upon which said writ of injunction was issued by the said Chancery Court of Knox County, Tennessee, was founded in the charges, substantially, that the trial in this Court of plaintiff's said action pending herein under the Federal Employers' Liability Act would (a) impose upon said Southern Railway Company greater expense than would the trial of such an action in the City of Knoxville, Knox County, Tennessee, the residence of the plaintiff, Ethel Painter, or in the District of North Carolina which includes the County of Madison of that state, in which the cause of action for the injury to and death of said Geoffrey L. Painter arose, (b) burden said Southern Railway Company in its work of moving interstate commerce, (c) permit said Ethel Painter to avoid the laws of the States of Tennessee and North Carolina, (d) permit said Ethel Painter to secure advantages of the laws of the State of Missouri, and (e) thereby permit said Ethel Painter to obtain improper and oppressive advantages so as to compel said Southern Railway Company to submit to unjust and unreasonable demands made by her, and deprive said Southern Railway Company of its property without due process of law.

VI.

No suit or action, other than the one hereipbefore mentioned as having been filed in this Court in this cause by

[fol. 60] said Ethel Painter, as administratrix aforesaid, has at any time been filed or brought in any State or Federal court to adjudicate the right of the estate, the surviving widow, and the surviving dependent minor children of said Geoffrey L. Painter, or either or any of them, to recover damages for his said injury and death, or to adjudicate the liability of said Southern Railway Company for damages for said injury and death.

VII.

The plaintiff, Ethel Painter, as administratrix aforesaid, desires to maintain and prosecute to a final conclusion in this Court her said action under the Federal Employers' Liability Act pending herein against defendant, Southern Railway Company, and is unable to do so without violating the said injunction of the Chancery Court of Knox County, State of Tennessee, and thereby subjecting herself to possible punishment for contempt.

VIII.

The plaintiff, therefore, by her supplemental complaint filed herein, seeks the aid of this Court by ancillary proceedings to restrain and enjoin the defendant, Southern Railway Company, from further prosecution of its injunction suit in the Chancery Court of Knox County, Tennessee, and to compel defendant to dismiss that injunction proceeding.

Conclusions of Law.

From the foregoing facts, the Court concludes that:

I.

The defendant, Southern Railway Company, is subject to suit, and personal service of process, in the Eastern Division of the Eastern Judicial District of Missouri [fol. 61] in actions brought under the Federal Employers' Liability Act (45 U.S.C.A. §§51-59).

II.

The plaintiff, Ethel Painter, administratrix as aforesaid, had and has a federal right to institute and prosecute in this Court her said action under the Federal Employers' Liability Act against defendant, Southern Railway Com-

pany, for damages for injury to and death of her decedent, Geoffrey L. Painter.

III.

Since August 31, 1939, this Court has had, and now has, specific, complete, sole and exclusive jurisdiction of and over the action of said plaintiff, Ethel Painter, administratrix as aforesaid, under the Federal Employers' Liability Act, to recover damages from defendant, Southern Railway Company, for the injury to and death of her decedent, Geoffrey L. Painter, and of and over the subject-matter thereof and the parties thereto.

IV.

The jurisdiction of this Court having attached to the action of plaintiff, Ethel Painter, as administratrix aforesaid, against defendant, Southern Railway Company, to recover damages for the injury to and death of her decedent under the Federal Employers' Liability Act, and to the subject-matter thereof and the parties thereto, the right of said plaintiff to prosecute her said action in this Court to a final conclusion, and the right of this Court to proceed to a hearing and determination of said action, without interference [Vol. 62] or impairment by proceedings in another court, cannot be intrenched upon.

V.

This Court has the duty, right, power and authority to maintain and exercise its jurisdiction of and over said action under the Federal Employers' Liability Act, and of and over the subject-matter thereof and the parties thereto, until the final object of said action is accomplished and complete justice done between the parties thereto; and, if necessary to that end, to issue its writ of injunction to:

(a) Preserve and protect the proper jurisdiction of this Court of and over the plaintiff's said action under the Federal Employers' Liability Act, and of and over the subject-matter thereof and the parties thereto;

(b) Prevent the parties to said action from doing any matter or thing which tends to interfere with, arrest, impair, frustrate or defeat the jurisdiction of this Court of and over said action under the Federal Employers' Liabil-

ity Act, or of and over the subject-matter thereof or the parties thereto;

(c) Prevent and defeat any attempt by either of the parties to said action to divert this action from this Court to any other court or courts; and

(d) Prevent defendant, Southern Railway Company, from carrying on a suit in a state court when and in so far as such suit interferes with effective trial and determination of the issues involved in plaintiff's said action under the Federal Employers' Liability Act pending in this Court, and of and over which said action this Court has full jurisdiction.

[fol. 63]

VI.

The injunction suit or proceeding instituted by defendant, Southern Railway Company, in the Chancery Court of Knox County, Tennessee, and the injunction secured therein by defendant restraining and enjoining the plaintiff here from further maintaining or prosecuting in this Court her said action under the Federal Employers' Liability Act, and further restraining and enjoining her from instituting or prosecuting a similar action in any state or federal court, other than those designated in said injunction issued by said Chancery Court, (1) interfere with, arrest, impair, and tend to frustrate and defeat the jurisdiction of this Court of and over plaintiff's said action under the Federal Employers' Liability Act pending in this Court against defendant, (2) interfere with, arrest, impair, and tend to frustrate and defeat the due and proper administration of justice, (3) attempt to divert the litigation of an action of and over which this Court had acquired jurisdiction, and of and over the subject-matter of which, and the parties to which, this Court had and has full jurisdiction, to another court or courts, (4) deprive the plaintiff of her absolute federal rights, granted her by the laws of the United States, to institute, maintain, and prosecute to a final conclusion in this Court her said action under the Federal Employers' Liability Act, and (5) work an inequitable and unconscionable wrong upon plaintiff, Ethel Painter, as administratrix aforesaid.

VII.

The Chancery Court of Knox County, State of Tennessee, was without authority or jurisdiction to entertain or consider the injunction suit or proceeding instituted [fol. 64] therein by defendant, Southern Railway Company, against the plaintiff, Ethel Painter, wherein it was sought to abrogate or limit the right of plaintiff, Ethel Painter, given her by the laws of the United States, to institute and prosecute an action under the Federal Employers' Liability Act in any of the jurisdictions prescribed by Section 6 of the Act (45 U. S. C. A. §56), including the Eastern Division of the Eastern Judicial District of Missouri.

Neither the legislatures nor the courts of any state have any right, power, authority or jurisdiction to in any manner interfere with or restrict the jurisdiction of the courts of the United States, or to interfere with or restrict the operation of a law or laws of the United States or any right granted thereunder.

VIII.

The said injunction issued by the said Chancery Court of Knox County, State of Tennessee, although valid and effective on its face, is null, void, and of no force or effect.

IX.

The plaintiff has no adequate remedy at law for relief from said injunction suit or proceeding in the Chancery Court of Knox County, State of Tennessee, or from the injunction issued therein, and, unless such injunction suit or proceeding, and injunction issued therein, be dismissed, this Court cannot properly perform its duties nor properly exercise its jurisdiction, prescribed by the laws of the United States, and plaintiff will be inequitably and unconscionably wronged and suffer irreparable damage.

X.

The plaintiff's supplemental complaint, seeking relief by injunction, ancillary to her primary action herein under the [fol. 65] Federal Employers' Liability Act, is a proper remedy, and an adequate method of securing injunctive relief from the conduct of defendant, Southern Railway Company, in instituting and prosecuting its injunction suit or proceeding in the Chancery Court of Knox County, Ten-

nessee, and a proper and adequate method of initiating the necessary action by this Court to preserve and protect its jurisdiction from interference, arrest, impairment, frustration or defeat.

XI.

Section 265 of the Judicial Code has no application to the relief sought herein by plaintiff's supplemental complaint, and plaintiff's said supplemental complaint, and the relief sought thereby, come within the plenary and inherent powers of this Court and Section 262 of the Judicial Code.

XII.

Plaintiff's motion for a preliminary injunction should be sustained, and a preliminary injunction should be granted plaintiff against the defendant as prayed in plaintiff's supplemental complaint.

Let a preliminary injunction be granted and issue accordingly.

Dated this 10th day of July, 1940.

J. C. COLLET,
United States District Judge.

[fol. 66] (Notice of Motion of Defendant for Order Staying and Superseding Preliminary Injunction until Disposition of Appeal.)

(Filed July 10, 1940.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

To Mark D. Eagleton and Roberts P. Elam, Attorneys for Plaintiff in above entitled cause:

Please Take Notice that on the 10th day of July, A. D. 1940, at the hour of 9:30 o'clock A. M., or as soon there-

after as counsel can be heard, Southern Railway Company, a corporation, the defendant above named, will present in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in Division No. 3 thereof, before Honorable J. C. Collet, Judge Presiding thereof, its petition asking that the said Court enter an order staying and superseding said preliminary injunction until said appeal shall be finally determined by the said Circuit Court of Appeals upon the above named defendant giving bond, with surety to be approved by the Court, conditioned as provided by Rule 73 of the Rules of Civil Procedure for the District Courts of the United States, and that it fix the amount of said bond and that the same may be approved by this Court, and that the Court [fol. 67] shall enter an order and judgment that upon the filing and approval of such bond all proceedings under said preliminary injunction shall be stayed and superseded until said appeal is finally determined by the said Circuit Court of Appeals, and that the Court shall further order that the said bond shall operate as a supersedeas bond and that said preliminary injunction shall have no force and effect during the pendency of said appeal. At the same time and place, after the said Court has fixed the amount of such supersedeas bond, the defendant will present to the Court for its approval a supersedeas bond, in such sum as the Court may have then fixed, and conditioned as provided by Rule 73 of the Rules of Civil Procedure for the District Courts of the United States, and will ask the said Court to approve the same; and at the same time will ask that the said District Court order, adjudge and decree that the said bond shall be a supersedeas bond, and that all proceedings in said cause on the preliminary injunction entered in this action on July 10th, A. D. 1940, be stayed until said appeal is finally determined; and that it be ordered and adjudged that said preliminary injunction shall be of no force and effect during the pendency of said appeal. The said bond will be signed by the American Surety Company of New York as surety.

A copy of said petition and a copy of said bond proposed to be filed, unsigned, undated and without the amount thereof named therein, is hereby handed to you as counsel of record for plaintiff in said cause.

[fol. 68] At said time and place you may be present, if you so desire, and take such action as you see fit.

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,

E. C. HARTMAN,
506 Olive Street,
St. Louis, Missouri.

BRUCE A. CAMPBELL,

KRAMER, CAMPBELL, COSTELLO
& WIECHERT,
606-618 First National Bank Bldg.,
East St. Louis, Illinois.
Attorneys for defendant.

Service is hereby acknowledged of a copy of above notice, together with copy of the petition referred to therein and proposed bond mentioned therein, this 10th day of July, A. D. 1940, and we consent that said motion may be heard as determined instantler by the Court.

MARK D. EAGLETON,
ROBERTS P. ELAM,

Attorneys for Plaintiff, Ethel
Painter, Administratrix of the
Estate of Geoffrey L. Painter,
Deceased.

[fol. 69] (Writ of Preliminary Injunction and Marshal's
Return.)

(Filed July 12, 1940.)

United States of America,
Eastern District of Missouri,
Eastern Division.—ss.:

In The District Court of the United States Within and for
the Eastern Division of the Eastern Judicial District
of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff.
No. 300. vs. Court Room No. 3.
Southern Railway Company, a Corporation, Defendant.

The President of the United States of America to the Southern Railway Company, a corporation,—Greeting:

Whereas, Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, plaintiff in the above entitled cause, has heretofore filed in the District Court of the United States for the Eastern District of Missouri, Eastern Division, a supplemental complaint against the above named defendant, in said cause, and has heretofore obtained an allowance for a preliminary injunction as prayed for in said supplemental complaint,

Now, Therefore, v.e. having regard to the matters in said supplemental complaint contained, do hereby enjoin, inhibit, restrain and command you, the said Southern Railway Company, and your agents, servants and anyone acting by, through or for you, from:

1. In any way interfering, or in any way doing any matter or thing tending to interfere, with the liberty of the plaintiff, Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, Deceased, in carrying on, prosecuting, and maintaining that certain action under the Federal Employers' Liability Act, for injury to and death of her said decedent which occurred on or about the 3rd day of February, 1939, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant;"

2. In any way interfering, or in any way doing any matter or thing tending to interfere, with the jurisdiction of this Court of and over said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant," or with the jurisdiction of this Court of and over the subject matter thereof or the parties thereto; and

3. Taking any except dismissal proceedings in that certain action pending in the Chancery Court of Knox County, State of Tennessee, wherein said Southern Railway Company, a corporation, is complainant, and the plaintiff herein, Ethel Painter, as Administratrix of the Estate of Geof-

frey L. Painter, Deceased, and in her own right as an individual, is defendant, and wherein it is sought to enjoin and restrain said Ethel Painter, as administratrix aforesaid and individually in her own right, from prosecuting and maintaining said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant."

And we further do hereby enjoin, command and direct you, the Southern Railway Company, a corporation, forthwith to dismiss and set at naught that certain proceeding and cause [fol. 71] of action commenced by you and now pending in the Chancery Court of the County of Knox, State of Tennessee, wherein said Southern Railway Company, a corporation, is complainant, and said Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, Deceased, and in her own right as an individual, is defendant, and in and by which said action it is sought to enjoin and restrain said Ethel Painter, as administratrix aforesaid and individually in her own right, from prosecuting or maintaining said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant."

Hereof fail not, under the penalty which may ensue.

Witness the Honorable John C. Collet, Judge of the District Court of the United States of America for the Eastern District of Missouri, and the Seal of said Court hereunto affixed.

Issued in St. Louis, in said District, this 10 day of July, A. D. 1940.

Seal
U. S. Dist. Court
East. Div. of the
East. Judicial Dist.
of Missouri.

JAMES J. O'CONNOR, Clerk.
By: Clare Redmond,

Deputy Clerk.

MARK D. EAGLETON and
ROBERTS P. ELAM,
1004 Telephone Building,
St. Louis, Missouri,

Attorneys for Plaintiff.

[fol. 72]

Marshal's Return.

I Hereby Certify that in St. Louis, Missouri, on July 12th, 1940, I executed the within writ by serving the same on the within-named Southern Railway Company, a Corporation, by delivering a true and correct copy of Writ of Preliminary Injunction, as furnished by the Clerk of the Court, to Mr. B. F. Harris, who is Superintendent of the within-named Southern Railway Company, who was in charge at time of service, no higher officers being present.

WILLIAM B. FAHY,

United States Marshal.

Marshal's Fees.....\$4.06.

TILDEN DELANEY,

Deputy.

[fol. 73]

Petition for Supersedeas.

(Filed July 10, 1940.)

In The District Court of The United States for The Eastern Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

Now comes Southern Railway Company, a corporation, defendant in the above entitled cause, by Fordyce, White, Mayne, Williams & Hartman, E. C. Hartman, Kramer, Campbell, Costello & Wiechert and Bruce A. Campbell, its attorneys, and states that it has this day filed a notice of appeal in said cause to the Circuit Court of Appeals for the Eighth Circuit from the interlocutory judgment entered in this cause on July 10th, A. D. 1940, granting, on motion of plaintiff above named, a preliminary injunction, as set forth in said judgment, against the defendant above named; and states that it desires to execute and file a supersedeas bond so that it may have a stay on appeal, and that such bond may also act as a supersedeas bond as to said preliminary injunction during the pendency of said appeal. It further states that it respectfully requests that the Court enter an order, staying and superseding the preliminary injunction issued as aforesaid until the final decision of said Circuit Court of Appeals upon such appeal.

[fol. 74] Defendant respectfully prays that the Court enter an order, staying and superseding said preliminary injunction until said appeal shall be finally determined by the said Circuit Court of Appeals upon the above named defendant giving bond; with surety to be approved by the Court, conditioned as provided by Rule 73 of the Rules of Civil Procedure for the District Courts of the United States; that the Court fix the amount of said bond and that the same may be approved by this Court, and that the Court shall enter an order and judgment that upon the filing and approval of such bond, all proceedings under said preliminary injunction shall be stayed and superseded until said appeal is finally determined by the said Circuit Court of Appeals, and that the Court shall further order that the said bond shall operate as a supersedeas bond; and that said temporary injunction shall have no force and effect during the pendency of said appeal.

All of which is respectfully asked and prayed.

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,

E. C. HARTMAN,

506 Olive Street,
St. Louis, Missouri.

BRUCE A. CAMPBELL,

KRAMER, CAMPBELL, COSTELLO
& WIECHERT,

606-618 First National Bank Bldg.,
East St. Louis, Illinois, Attorneys
for Defendant.

[fol. 75] (Order Staying and Superseding Preliminary Injunction Until Disposition of Appeal.)

(Filed July 10, 1940.)

In The District Court of The United States for the Eastern
Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

And now on this 10th day of July, A. D. 1940, this cause came on to be heard, upon notice to opposite counsel, on defendant's petition that the Court enter an order staying and superseding the preliminary injunction issued on July 10th, A. D. 1940, on motion of plaintiff, against the above named defendant, until said appeal shall be finally determined by the said Circuit Court of Appeals, on the appeal taken by the above named defendant from said order granting said preliminary injunction to the Circuit Court of Appeals for the Eighth Circuit upon the above named defendant giving bond, with surety to be approved by the Court, conditioned as provided by Rule 73 of the Rules of Civil Procedure for the District Courts of the United States; further praying that the Court may fix the amount of said bond and that the same may be approved by this Court, and that the Court shall enter an order and judgment that upon the filing and approval of such bond all proceedings under said preliminary injunction shall be stayed and superseded until said appeal is finally determined by the said Circuit Court of Appeals, and that the Court shall [fol. 76] further order that the said bond shall operate as a supersedeas bond and that said preliminary injunction shall have no force and effect during the pendency of said appeal.

And the Court, having fully considered the said petition, and being fully advised in the premises, allows the prayer of said petition; and orders, adjudges and decrees that the amount of the supersedeas bond in this case, pending said appeal, be and the same is hereby fixed at Two Hundred and Fifty Dollars (\$250.00).

And also now comes the above named defendant, Southern Railway Company, a corporation, and presents a supersedeas bond in the penal sum heretofore fixed by the Court and conditioned as provided by Rule 73 of the Rules of Civil Procedure for the District Courts of the United States, duly executed by the said Southern Railway Company, a corporation, as principal, and by American Surety Company of New York as surety. And the Court having examined said bond and being fully satisfied with the conditions of the same and the surety thereon, and being fully advised in the premises,

It Is Ordered, Adjudged And Decreed by the Court that the said supersedeas bond be and the same is hereby approved.

It Is Further Ordered, Adjudged And Decreed by the Court that said preliminary injunction is hereby stayed and superseded until said appeal from the judgment granting the same shall be fully determined by the United States Circuit Court of Appeals for the Eighth Circuit. That all [fol. 77] proceedings under said preliminary injunction shall be stayed and superseded until said appeal is finally determined by the said Circuit Court of Appeals. That said bond shall operate as a supersedeas bond, and that said preliminary injunction shall have no force and effect during the pendency of said appeal.

J. C. COLLET,

Judge.

[fol. 78]

Supersedeas Bond.

(Filed July 10, 1940.)

Know All Men By These Presents, that we, Southern Railway Company, a corporation, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, in the penal sum of Two hundred and fifty and no 100 Dollars (\$250.00), lawful money of the United States, for the payment of which well and truly to be made we hereby bind ourselves, our successors and assigns, jointly, severally and firmly by these presents.

Witness Our Hands and Seals This 10th Day of July, A. D. 1940.

The Condition of the Above Obligation is Such That,

Whereas, the said Southern Railway Company, a corporation, has filed its notice of appeal in the office of the Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, appealing to the Circuit Court of Appeals for the [fol. 79] Eighth Circuit from the interlocutory judgment entered as of July, A. D. 1940, granting, on motion of the plaintiff above named, a preliminary injunction as

set forth in said judgment, against the defendant above named; and,

Whereas, the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri has entered an order fixing the amount of and the conditions of a supersedeas bond to be executed by the above named defendant, Southern Railway Company, a corporation, with a surety to be approved by the Court, and staying and superseding said preliminary injunction until said appeal shall be finally determined by the said Circuit Court of Appeals, and providing that the bond to be given shall operate as a supersedeas bond and that said preliminary injunction shall have no force and effect during the pendency of said appeal;

Now, Therefore, if the above bounden, Southern Railway Company, a corporation, shall pay all costs on said appeal and shall satisfy said judgment in said District Court in full, together with costs, interest and damages for delay, if for any reason the said appeal is dismissed, or if the said judgment is affirmed, or shall satisfy in full such modification of said [judgement], and such costs, interest and damages as the appellate court may charge and award, then and in that case this obligation shall be null and void; otherwise to remain in full force and effect.

SOUTHERN RAILWAY COMPANY,
By John B. Hyde, Vice-President.

(Corporate Seal)

Attest:

Guy E. (name illegible),
Assistant Secretary.

AMERICAN SURETY COMPANY
OF NEW YORK,

(name illegible) Resident Vice President.

(Corporate Seal)

Attest:

V. K. Watson,
Resident Assistant Secretary.

Approved 7/10/40. J. C. COLLET.

[fol. 80] Docket Entries In Accordance With Designation
of Appellant.

(Docket Entry of Filing of Complaint, etc.)

August 31, 1939.

Complaint filed and summons issued directed to defendant returnable within twenty days after service.

(Docket Entry of Filing of Marshal's Return of Service
of Summons.)

September 8, 1939.

Marshal's return of service to summons filed. (Executed.)

(Docket Entry of Filing of Answer.)

September 25, 1939.

Answer of defendant to Plaintiff's complaint, filed.

(Docket Entry of Setting of Case for Trial.)

November 8, 1939.

Case set for trial on Monday, January 8, 1940.

(Docket Entry of Resetting of Case for Trial.)

January 2, 1940.

Order heretofore entered setting cause for trial on January 8, 1940, vacated and cause set for trial on March 4, 1940.

(Docket Entry of Filing of Notice of Intention of Plaintiff
to take Depositions.)

January 15, 1940.

Plaintiff's notice of intention to take deposition of witnesses at Knoxville, Tennessee, on January 23, 1940 bearing acknowledgment of service by counsel for defendant, filed.

(Docket Entry of Filing of Depositions on Behalf of Plaintiff.)

February 23, 1940.

Deposition of witness taken on behalf of plaintiff at Knoxville, Tennessee, received and filed.

(Docket Entry of Continuing of Cause to March Term, 1940.)

March 4, 1940.

Cause continued to March Term, 1940.

(Docket Entry of Filing of Amended Complaint.)

March 8, 1940.

Plaintiff's amended complaint filed by leave.

(Docket Entry of Filing of Depositions on Behalf of Plaintiff.)

March 13, 1940.

Depositions of witnesses taken on behalf of plaintiff at Marshall, North Carolina, received and filed.

(Docket Entry of Filing of Motion of Defendant to Require Plaintiff to make Amended Petition more Definite and Certain.)

March 18, 1940.

Motion of defendant to require plaintiff to make amended petition more definite and certain, filed.

(Docket Entry of Overruling of Motion of Defendant to Require Plaintiff to make Amended Petition more Definite and Certain, etc.)

April 1, 1940.

Case set for trial on Monday, May 13, 1940. By leave, motion of defendant to require plaintiff to make amended

complaint more definite and certain, argued, submitted and overruled.

(Docket Entry of Filing of Answer.)

April 12, 1940.

Answer of defendant to plaintiff's first amended complaint, filed.

[fol. 81] (Docket Entry of Resetting of case for Trial on May 20, 1940.)

April 15, 1940.

Order heretofore entered setting cause for trial on May 13, 1940, vacated and cause reset for trial on May 20, 1940.

(Docket Entry of Resetting of Case for Trial on July 8, 1940.)

May 20, 1940.

Cause reset for trial on July 8, 1940.

(Docket Entry of Oral Motion of Plaintiff for Leave to File Supplemental Complaint, etc.)

June 7, 1940.

Oral motion of plaintiff for leave to file supplemental complaint made, heard and submitted on briefs to be presented by June 12, 1940. Plaintiff's notice of said supplemental complaint filed.

(Docket Entry of Filing of Motion of Plaintiff for Writ of Injunction Against Defendants, etc.)

June 20, 1940.

Motion of plaintiff for a writ of injunction against defendant, its agents, etc., pending suit herein, etc., together with notice to docket said motion for hearing on July 1, 1940, filed.

(Docket Entry of Filing of Supplemental Bill of
Complaint.)

June 21, 1940.

[Supplement] bill of complaint, with leave to file same
endorsed thereon, received and filed.

(Docket Entry of Filing of Temporary Restraining
Order, etc.)

June 21, 1940.

Temporary restraining order of Hon. J. C. Collet, received, filed and entered restraining defendant from taking any except dismissal proceedings in certain action pending in the Chancery Court of Knox County, Tennessee, wherein Southern Railway Co., is complainant and Ethel Painter, as administratrix, etc., is defendant, from in any way interfering with the jurisdiction of this court, etc., such order to become effective upon filing, entry, and the giving of security by plaintiff by filing cost bond to be approved by the Clerk in the sum of \$250.00 or by depositing the sum of \$250.00 with said Clerk for the payment of such costs and damages as may be incurred by any party who may have been found to have been wrongfully enjoined or restrained hereby, such restraining order to remain in force only until the hearing and determination of the motion for a preliminary injunction herein set for hearing July 1, 1940, and of which hearing defendant is hereby notified, etc. Plaintiff pursuant to aforesaid order deposits with the Clerk in lieu of bond the sum of \$250.00, which sum is deposited by the Clerk in the Registry of the Court.

(Docket Entry of Filing of Motion of Defendant to Dismiss
Supplemental Complaint.)

June 24, 1940.

Motion of defendant to dismiss plaintiff's supplemental complaint filed.

(Docket Entry of Argument on Motion for Injunction, etc.)

July 1, 1940.

Robert P. Elam, Esq. enters his appearance as associate counsel for plaintiff. Motion of plaintiff for an injunction against defendant argued and submitted and temporary restraining order heretofore entered remain in effect until ruling on aforesaid motion for injunction.

(Docket Entry of Passing of Case for Resetting.)

July 8, 1940.

Cause passed for resetting.

[fol. 82] (Docket Entry of Filing of Findings of Fact and Conclusions of Law, etc.)

July 10, 1940.

Findings of fact and conclusions of law sustaining motion of plaintiff for preliminary injunction, filed and order in accordance therewith granting such preliminary injunction filed and entered, directing plaintiff to give bond in the sum of \$250.00 to be approved by the Clerk of the Court, or deposit said sum in cash with such Clerk for the payment of such costs and damages as may be incurred or suffered by any party, who may have been found to have been wrongfully enjoined or restrained by said preliminary injunction, and such preliminary injunction to remain in full force and effect until the final hearing of this cause, or until further order. Thereafter plaintiff, by her attorney, deposits with the Clerk the sum of \$250. in lieu of the aforesaid bond, which sum is deposited by Clerk in the Registry of the Court. Writ of temporary injunction issued. Defendant's notice of appeal to USCCA, 8th Circuit, from interlocutory judgment entered this day granting plaintiff a preliminary injunction, such notice bearing acknowledgment of service by attorneys for plaintiff, filed. Notice of presentation and petition of defendant for a supersedeas of the aforesaid preliminary injunction, filed and said petition presented and granted in order filed and entered. Supersedeas bond of defendant in the sum of \$250.00 presented, approved and filed. Defendant's design-

nation of contents of record on appeal filed. Stipulation of parties that plaintiff will take no action in this Court until the appeal of defendant from preliminary writ of injunction, etc., and all proceedings arising out of same are finally adjudicated, and that defendant will take no action in the Chancery Court at Knoxville, Knox County, Tennessee, in the case of "Southern Ry. Co. vs. Mrs. Ethel Painter, etc.," until the final adjudication of the aforesaid appeal, filed.

(Docket Entry of Filing of Marshal's Return of Service to Writ of Preliminary Injunction.)

July 12, 1940.

Marshal's return of service to writ of preliminary injunction filed. (Executed.)

[fol. 83] Designation of Contents of Record on Appeal.

(Filed July 10, 1940.)

In the District Court of the United States For the Eastern Division of the Eastern Judicial District of Missouri,

Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a corporation, Defendant.

To Honorable James J. O'Connor, Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri:

The above named defendant has filed in your office its Notice of Appeal from the interlocutory judgment entered in this cause on July 10th, A. D. 1940, granting, on motion of plaintiff above named, a preliminary injunction, as set forth in said judgment, against the defendant above named.

Under Rule 75 of the Rules of Civil Procedure for the District Courts of the United States, the above named defendant, Southern Railway Company, hereby designates the portions of the record, proceedings, etc., to be contained in the record on appeal, viz.: a full, true, correct and exact copy of all of the record and proceedings in said cause, including therein, but without such specification

limiting the request for a full, true, correct and exact copy of the record, the following:

1. The summons and the return thereon.
2. All the pleadings in said case, including the complaint and amended complaint, the answers of defendant thereto, and all motions filed by the defendant in relation to said pleadings, and all orders entered thereon.
- [Vol. 84] 3. Plaintiff's supplemental complaint for relief, together with notice to defendant's counsel of intention to call up said motion on June 7, 1940, and receipt of defendant's counsel therefor.
4. Order of the District Court, entered on June 19, 1940, granting a temporary restraining order until July 1, 1940, and fixing the last mentioned date for a hearing on plaintiff's motion for a preliminary injunction.
5. Plaintiff's bond on restraining order, and approval of same.
6. Writ issued on preliminary restraining order and return of Marshal showing service of same on defendant.
7. Plaintiff's motion for a preliminary injunction, together with notice to defendant's counsel that the same would be called up for hearing on July 1, 1940, and proof of service on [defendatn's] counsel.
8. Defendant's motion to dismiss plaintiff's supplemental complaint.
9. Order of Court of July 10th, 1940, granting preliminary injunction, together with findings of fact, conclusions of law and opinion, if any, filed by Court.
10. Notice of Appeal to Circuit Court of Appeals for the Eighth Circuit, together with proof of service of Notice by Clerk on plaintiff's counsel.
11. Defendant's petition for supersedeas, etc.
12. Order of the District Court allowing supersedeas, and fixing bond.

13. Supersedeas bond, together with approval thereof by Court.

14. Certificate of the Clerk to transcript of record.

No specification of particular portions of the record and proceedings is intended in any way to limit the general designation that the entire record in this cause be included in said transcript of record.

[fol. 85] Will you please, therefore, prepare record on appeal, as hereby designated, in accordance with the Rules of Civil Procedure for District Courts of the United States?

KRAMER, CAMPBELL, COSTELLO &
WIECHERT,

E. C. HARTMAN,

506 Olive Street,
St. Louis, Missouri.

BRUCE C. CAMPBELL,
KRAMER, CAMPBELL, COSTELLO &
WIECHERT,

606-618 First National Bank Bldg.,
East St. Louis, Illinois,
Attorneys for Defendant.

Service of the above designation is hereby acknowledged this 10th day of July, 1940.

MARK D. EAGLETON, and
ROBERTS P. ELAM,

Attorneys for Plaintiff.
By Roberts P. Elam.

[fol. 86] Clerk's Certificate.

United States of America,
Eastern Division of the Eastern
Judicial District of Missouri.—ss.:

I, Jas. J. O'Connor, Clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri, Do Hereby Certify the above and foregoing to be a full, true and complete

transcript (except insofar as the same is restricted by the designation of the contents of the record on appeal heretofore set out) of the record and proceedings in case No. 300, wherein Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased is plaintiff and Southern Railway Company, a corporation, is defendant, as fully as the same remains on file and of record in my office.

Seal
U. S. Dist. Court
East. Div.
East. Jud. Dist.
of Mo.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at office in the City of St. Louis, in said Division of said District this 23rd day of July, in the year of our Lord, Nineteen Hundred and forty.

JAS. J. O'CONNOR,
Clerk of said Court,
By C. E. Rudolph,
Deputy Clerk.

Filed Jul. 29, 1940. E. E. Koch, Clerk.

[fol. 87] Statement of Points Relied Upon on Appeal.

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,
No. 300. vs. Court Room No. 3.
Southern Railway Company, a corporation, Defendant.

Comes now the defendant (Appellant) in the above entitled cause and says that in the record and proceedings in this cause in the United States District Court manifest error has occurred to the prejudice of this defendant, to-wit:

I.

That said United States District Court erred in ordering and granting to plaintiff the preliminary injunction ordered and granted against the defendant.

II.

That said United States District Court was wholly without jurisdiction to grant and issue said order for preliminary injunction as ordered and granted by the said United States District Court.

[fol. 88]

III.

That the plaintiff was a resident of the State of Tennessee and the Southern Railway Company, a corporation, was a resident of the State of Virginia, and under Section 51 of the Judicial Code (28 U. S. C. A. Sec. 112) said United States District Court for the Eastern District of Missouri was not a proper venue for the adjudication and determination of the new equitable relief prayed for in plaintiff's supplemental bill of complaint, and said United States District Court for the Eastern District of Missouri erred in taking jurisdiction over the persons and subject matter involved in plaintiff's supplemental complaint.

IV.

That said United States District Court erred in ordering:

1. That the defendant be restrained from interfering in any way with the liberty of the plaintiff from carrying on, prosecuting and maintaining her cause of action under the Federal Employers' Liability Act for the injuries to and the death of her intestate, Geoffrey L. Painter.

2. That the defendant be restrained from interfering in any way with the jurisdiction of the United States District Court over the subject matter and the parties.

3. That the defendant be restrained from prosecuting and maintaining the cause pending in the Chancery Court [fol. 89] of Knox County, State of Tennessee, wherein the Southern Railway Company, a corporation, is complainant, and Ethel Painter, as Administratrix of the estate of Geoffrey L. Painter, deceased, is defendant.

4. That the defendant is affirmatively ordered, directed and commanded to forthwith dismiss and set at naught the cause of action and proceedings therein pending in the Chancery Court of the County of Knox, State of Tennessee,

wherein, said Southern Railway Company, a corporation, is complainant, and said Ethel Painter, Administratrix of the estate of Geoffrey L. Painter, deceased, is defendant.

V.

That said United States District Court erred in assuming control over the acts of plaintiff as Administratrix of the estate of Geoffrey L. Painter, deceased, - contrary to and in violation of the order and decree of the Chancery Court of the County of Knox, State of Tennessee.

VI.

That the said rights, powers, privileges, duties and obligations of the plaintiff, Ethel Painter, Administratrix of the estate of Geoffrey L. Painter, deceased, were created and are controlled by the laws, judgments, orders and decrees of the State of Tennessee, acting by and through its duly appointed officers, agents and servants, and the United States District Court erred in exercising jurisdiction over the plaintiff contrary to the decree and order of the Chancery Court of the County of Knox, State of Tennessee, which had prior jurisdiction over the person of plaintiff, both individually and in her representative capacity, and of the subject matter in Tennessee.

VII.

That the Chancery Court of the County of Knox, State of Tennessee, had jurisdiction of the subject matter and the parties in the cause, wherein, the Southern Railway Company was complainant and Ethel Painter, Administratrix of the estate of Geoffrey L. Painter, deceased, was defendant, and the decree of said Court was and is a valid, subsisting and binding decree and judgment upon the parties and cannot be collaterally attacked by decree and order of the United States District Court, and said United States District Court erred in ordering and decreeing that the Southern Railway Company be restrained and interfered with in carrying in full force and effect the decree and order of said Chancery Court of the County of Knox, State of Tennessee.

VIII.

That all powers, rights, authority and duties imposed upon the said Ethel Painter, as Administratrix of the

estate of Geoffrey L. Painter, deceased, are controlled and limited solely and exclusively by the laws of the State of Tennessee and the orders and decrees of the courts of Tennessee having jurisdiction over the said Ethel Painter, Administratrix of the estate of Geoffrey L. Painter, deceased, [fol. 91] ceased, and the order and decree of said United States District Court insofar as it assumed control over the rights, powers, privileges, duties and immunities granted to and imposed upon the said Ethel Painter, Administratrix of the estate of Geoffrey L. Painter, deceased, and Southern Railway Company were erroneous, invalid and void and of no effect.

IX.

That the United States District Court erred in failing to give full faith and credit to the judicial proceedings of the State of Tennessee in the cause pending in the Chancery Court of the County of Knox, State of Tennessee, wherein, Southern Railway Company was complainant and the said Ethel Painter, Administratrix, was defendant, in violation of Article IV, Sec. 1 of the Constitution of the United States.

X.

That the proceedings in the Chancery Court of the County of Knox, State of Tennessee, was a final determination of the issues involved in the United States District Court; that said decree, orders and judgments of the Chancery Court of the County of Knox, State of Tennessee, was a complete bar to the judgment of the United States District Court and was res adjudicata to the issues involved, and the United States District Court erred in failing to give full faith and credit to the judicial proceedings of said Chancery Court of the County of Knox, State of [fol. 92] Tennessee, in violation of Article IV, Sec. 1 of the Constitution of the United States.

XI.

The order, decree and judgment of the District Court in granting the temporary writ of injunction was erroneous

and in violation of Section 265 of the United States Judicial Code (28 U. S. C. A. Sec. 579).

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,

E. C. HARTMAN,
506 Olive Street,
St. Louis, Missouri.

KRAMER, CAMPBELL,
COSTELLO & WIECHERT,

BRUCE A. CAMPBELL,

NORMAN J. GUNDLACH,
606-618 First National Bank Bldg.,
East St. Louis, Illinois.
Attorneys for Defendant.

Endorsed: Filed in U. S. Circuit Court of Appeals on
July 29, 1940.

[fol. 93] Order as to Setting of Case for Hearing at November Term, 1940, at St. Louis, Mo.)

United States Circuit Court of Appeals,
Eighth Circuit.

May Term, 1940.

Monday, August 5, 1940.

Southern Railway Company, Appellant,
No. 11,794. vs.
Ethel Painter, Admr., etc.

Appeal from the District Court of the United States for
the Eastern District of Missouri.

Motion of appellee has been filed to advance this cause on the docket for an early hearing and determination of the appeal, and suggestions of appellant have been filed in opposition. Since filing thereof counsel for each of the parties has indicated to the Clerk of this Court that they do not wish to personally present these matters and that a setting of this cause for hearing at the November Term

1940 of this Court at St. Louis, Missouri, will be satisfactory inasmuch as counsel reside in St. Louis.

Therefore, and for the reason that the final setting of cases for the intervening October Term 1940 of this Court has been prepared, It is ordered by this Court that this cause be placed on the calendar of cases for hearing on the first day on which cases will be assigned for hearing at the November Term 1940 of this Court at St. Louis, Missouri.

August 5, 1940.

[fol. 1] (Stipulation for Filing of Copy of Order Granting Preliminary Injunction and Adding Same to Printed Record.)

In the United States Circuit Court of Appeals.

Southern Railway Company, a corporation, Appellant,
 No. 11,794. vs. Civil.
 Ethel Painter, Administratrix of the Estate of Geoffrey
 L. Painter, Deceased, Appellee.

It is hereby stipulated and agreed by and between the parties hereto that the order of the District Court granting preliminary injunction, entered of record in the District Court on July 10, 1940, may be added to and made a part of the appellate record in this cause.

MARK D. EAGLETON,
 ROBERTS P. ELAM,

Attorneys for Appellee.

FORDYCE, WHITE, MAYNE,
 WILLIAMS & HARTMAN,

KRAMER, CAMPBELL, COS-
 TELLO & WIECHERT,

Attorneys for Appellant.

Dated January 22, 1941.

(Endorsed): No. 11,794. Stipulation for filing of copy of Order granting preliminary injunction and adding same to printed record. Filed in U. S. Circuit Court of Appeals on January 22, 1941.

[fol. 3] (Order Granting Preliminary Injunction, July 10, 1940.)

In the District Court of the United States Within and for the Eastern Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

This cause coming on to be heard on the 1st day of July, 1940, upon the motion of Ethel Painter, Administratrix

of the Estate of Geoffrey L. Painter, Deceased, plaintiff in said cause, for a preliminary injunction, and upon plaintiff's verified supplemental complaint, and upon the files, records and proceedings in said cause, and after hearing counsel for the respective parties, and it appearing to the Court that it is necessary to prevent immediate and irreparable damage for the reason that the acts and the conduct of the defendant in instituting and prosecuting an injunction proceeding against plaintiff in the Chancery Court of Knox County, State of Tennessee, enjoining and restraining plaintiff from prosecuting and maintaining her action in this Court in this cause under the Federal Employers' Liability Act, deprives plaintiff of a Federal right specifically granted her by the laws of the United States, and interferes with, impairs, arrests, and tends to frustrate and defeat jurisdiction of this Court of and over plaintiff's said action under the Federal Employers' Liability Act, and of and over the subject-matter thereof and the parties thereto,

It Is Ordered, Adjudged and Decreed that a preliminary injunction be, and it hereby is, granted plaintiff against the defendant, its agents, servants, and anyone acting by, through or for it, restraining it and them from:

1. In any way interfering, or in any way doing any matter or thing tending to interfere, with the liberty of the plaintiff, Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, Deceased, in carrying on, prosecuting, and maintaining that certain action under the Federal Employers' Liability Act, for injury to and death of her said decedent which occurred on or about the 3rd day of February, 1939, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant;"

2. In any way interfering, or in any way doing any matter or thing tending to interfere, with the jurisdiction of this Court of and over said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant;"

ant." or with the jurisdiction of this Court of and over the subject-matter thereof or the parties thereto; and

3. Taking any except dismissal proceedings in that certain action pending in the Chancery Court of Knox County, State of Tennessee, wherein said Southern Railway Company, a corporation, is complainant, and the plaintiff herein, Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, Deceased, and in her own right as an individual, is defendant, and wherein it is sought to enjoin and restrain said Ethel Painter, as administratrix [fol. 5] aforesaid and individually in her own right, from prosecuting and maintaining said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant."

And It Is Further Ordered, Adjudged And Decreed that the defendant, Southern Railway Company, be, and it hereby is, enjoined, commanded, and directed to forthwith dismiss and set at naught that certain proceeding and cause of action commenced by it and now pending in the Chancery Court of the County of Knox, State of Tennessee, wherein said Southern Railway Company, a corporation, is complainant, and said Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, Deceased, and in her own right as an individual, is defendant, and in and by which said action it is sought to enjoin and restrain said Ethel Painter, as administratrix aforesaid and individually in her own right, from prosecuting or maintaining said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant."

And It Is Further Ordered that plaintiff forthwith give a penal bond in the sum of \$250.00, to be approved by the Clerk of this Court, or deposit the said sum in cash with the Clerk of this Court, for the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or re-

strained by said preliminary injunction, and that said preliminary injunction remain in full force and effect until [fol. 6] the final hearing of this cause and until the further order of this Court.

Dated July 10th, 1940.

J. C. COLLET,
United States District Judge.

July 10, 1940.

\$250.00 in cash deposited by Mark D. Eagleton, Atty. for Plaintiff, in lieu of Bond.

JAMES J. O'CONNOR,
Clerk, United States District Court.

Endorsed: Filed July 10, 1940. Jas. J. O'Connor, Clerk.

[fol. 7] United States of America,
Eastern District of Missouri—ss.:

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original Order granting preliminary injunction in Case No. 300, filed July 10, 1940,

Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff,

vs.

Southern Railway Company, a Corporation, Defendant.

now remaining among the records of the said Court in my office.

In Testimony Whereof, I have here-
unto subscribed my name and
affixed the seal of the aforesaid
Court at St. Louis, Mo., this
21st day of January, A. D. 1941.

(Seal)
U. S. Dist. Court
East. Div.
East. Jud. Dist.
of Mo.

JAMES J. O'CONNOR, Clerk,
By Anna R. Martin, Deputy Clerk.

(Endorsed): No. 11,794. Certified copy of Order granting Preliminary Injunction. Filed in U. S. Circuit Court of Appeals on January 22, 1941.

[fol. 77] And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz.:

(Appearance of Counsel for Appellant.)

United States Circuit Court of Appeals,
Eighth Circuit.

Southern Railway Company, a corporation, Appellant,
No. 11,794. vs.
Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, deceased.

The Clerk will enter my appearance as Counsel for the Appellant.

BRUCE A. CAMPBELL,
NORMAN J. GUNDLACH,
606-618 First National Bank
Bldg., E. St. Louis, Ill.

S. W. FORDYCE,
E. C. HARTMAN,
506 Olive St.,
St. Louis, Mo.

(Endorsed): Filed in U. S. Circuit Court of Appeals,
July 29, 1940.

(Appearance of Counsel for Appellee.)

The Clerk will enter my appearance as Counsel for the Appellee.

MARK D. EAGLETON,
ROBERTS P. ELAM.

(Endorsed): Filed in U. S. Circuit Court of Appeals,
Nov. 15, 1940.

[fol. 78] (Order of Submission.)

November Term, 1940.

Monday, November 18, 1940.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Bruce A. Campbell for appellant, continued by Mr. Roberts P. Elam for

appellee, and concluded by Mr. Bruce A. Campbell for appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 79]

(Opinion.)

United States Circuit Court of Appeals,
Eighth Circuit.

No. 11,794.—NOVEMBER TERM, A. D. 1940.

Southern Railway Company, a
corporation,

Appellant,

vs.

Ethel Painter, Administratrix of
Geoffrey L. Painter, deceased,
Appellee.

} Appeal from the Dis-
trict Court of the
United States for
the Eastern Dis-
trict of Missouri.

[January 10, 1941.]

Mr. Bruce A. Campbell (Mr. E. C. Hartman, Mr. Norman J. Gundlach, Messrs. Fordyce White, Mayne, Williams & Hartman, and Messrs. Kramer, Campbell, Costello & Wiechert, were with him on the brief) for Appellant.

Mr. Roberts P. Elam (Mr. Mark D. Eagleton was with him on the brief) for Appellee.

Before GARDNER, WOODROUGH and JOHNSON, Circuit Judges.

WOODBROUGH, Circuit Judge, delivered the opinion of the court.

The Southern Railway Company appeals from an injunctive order restraining it from enforcing an injunction issued at its instance by a state court of Tennessee. The railway company was sued in the federal court for the Eastern District of Missouri by Ethel Painter, administratrix of the estate of Geoffrey L. Painter, on the ground that the railway company had negligently caused the death of her intestate and that she was entitled to damages therefor under the provisions of the Federal Employers' Liability Act (45 U.S.C.A. 51-59). The company answered the complaint filed in the federal court and denied liability; it did not question the venue, nor did it deny that the court had jurisdiction of the cause. Thereafter it instituted an action in the chancery court of Knox county at Knoxville, Tennessee, and there pleaded that Mrs. Painter and her deceased husband were at the time of the accident which caused his death, citizens of Tennessee; that the accident occurred in Tennessee; that witnesses to the accident lived and worked in Tennessee, and that it would disrupt the railway's business and cause it great expense to try Mrs. Painter's cause of action where it had been brought, in the Eastern District of Missouri at St. Louis, in which district the railway did only an interstate business. It alleged that the estate of Geoffrey L. Painter was insolvent and that if it should be successful in its defense of the action by the administratrix, it could not recover its expenditures. Stating that the action could be conveniently tried by the parties in the courts of Tennessee or of North Carolina, it alleged that the action was brought in St. Louis to obtain for the administratrix an unfair and inequitable advantage, and it prayed that the chancery court enjoin the administratrix from prosecuting her action in the federal court for the Eastern District of Missouri, or in any other state or federal court which did not sit in certain specified cities or towns, some in Tennessee and some in North Carolina. The chancery court granted the injunction.

The administratrix then filed a supplemental bill in her original suit in the federal district court, praying that the railway be enjoined from enforcing the injunction issued by the chancery court of Knox county, Tennessee. The railway contended upon motion to dismiss the supplemental bill, that the federal court lacked jurisdiction over the subject matter thereof, and that the relief could not be granted; that the relief sought was an injunction against proceedings in a state court, contrary to the prohibition of Sec. 265 of the Judicial Code. The district court proceeded to hearing upon the supplemental bill and issued a preliminary injunction against the railway. The holding was that the injunction issued by the Tennessee court interfered with the jurisdiction of the federal court which had attached for trial of the merits of the administratrix's claim for damages, and that the federal courts were authorized by Sec. 262 of the Judicial Code to protect their jurisdiction by issuing "all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdiction". The railway company appeals.

It does not contend that the federal district court for the Eastern District of Missouri lacked jurisdiction of the complaint which the administratrix filed therein against it under the Federal Employers' Liability Act 45 U.S.C.A. 51-59. That Act provides, 45 U.S.C.A. 56,

"Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action."

See *Moore v. C. & O. Ry. Co.*, 291 U.S. 205; *Hoffman v. Foraker*, 274 U.S. 21. The Railway Company does not contend that it was not doing business in the Eastern District of Missouri, and the trial court found as a fact that it was and is so doing business, "operating its railroad trains in, into and out of said City of Saint Louis".

The railway company contends, first, that the injunction issued by the Tennessee chancery court is a judgment which cannot be attacked collaterally but must be given full faith and credit; and second, that the federal district court had no power to enjoin against enforcement of the Tennessee injunction, since to do so would be enjoining proceedings in a state court contrary to Sec. 265 of the Judicial Code.

The injunction of the Tennessee court was granted upon ex parte application of the railway company. The administratrix contends that although that court had jurisdiction of the parties, it did not have jurisdiction of the subject matter of the action, that is, to enjoin a party from proceeding with an action in personam for a money judgment pending in a federal court. In answer to this, the railway company contends that its action in Tennessee for injunction was in personam against the administratrix, and that the decree should not be construed as an injunction against the federal court. It cites as authority, Roberts' Federal Liabilities of Carriers, (2d Ed.) Vol. 2, Sec. 962, p. 1855, where a quotation to this effect is given from High on Injunctions, Sec. 106. Also 14 R.C.L. Sec. 114, pp. 413-14; *L. & N. R. Co. v. Pagen*, 172 Tenn. 593, 113 S.W.2d 743. It contends that upon this construction of the injunction suit it should be ruled that actions under the Federal Employers' Liability Act may be enjoined by a state court, citing *Reed's Administratrix v. I. C. R. Co.*, 182 Ky. 455, 206 S.W. 794; *Chic., M. & St. P. R. Co., v. McGinley*, 175 Wis. 565, 185 N.W. 218; *N.Y.C. & St. L. R. Co. v. Matzinger*, 136 Oh. St. 271, 25 N.E.2d 349; *N.Y.C. & St. L. R. Co. v. Nortoni*, 331 Mo. 764, 55 S.W.2d 272, 85 A.L.R. 1345 (state court actions enjoined); and *Bryant v. Atlantic Coast Line Co.*, 2 Cir., 92 F.2d 569 (a federal court action enjoined). The railway company also contends that the injunction issued by the federal court pursuant to the prayer of the supplemental bill was one against the Tennessee court rather than one merely in personam against the railway company.

It cites *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 309 U.S. 4, to support its point that the realistic effect of the injunction process must be recognized, and we deem that case applicable and controlling, not only on the proposition that such construction should be given to injunctions issued by federal courts, but also on the proposition that a similar realistic construction should be given to injunctions issued by courts of a state. The effect of the Tennessee injunction is to oust the federal district court of its jurisdiction over the case pending for damages as really as the injunction issued pursuant to the supplemental bill ousts the jurisdiction of the Tennessee chancery court. Nearly all cases which discuss respective jurisdiction of state and federal courts decide that there is a certain parity of respect which each must have for the other. In discussing the effect of Sec. 265 of the Judicial Code, the Supreme Court of the United States said in *Essanay Film Co. v. Kane*, 258 U.S. 358, 361,

“Since 1793, the prohibition of the use of injunction from a federal court to stay proceedings in a state court has been maintained continuously, and has been consistently upheld. *Hull v. Burr*, 234 U.S. 712, 723, and cases cited. In exceptional instances, the letter has been departed from while the spirit of the prohibition has been observed; for example, in cases holding that, in order to maintain the jurisdiction of a federal court properly invoked, and render its judgments and decrees effectual, proceedings in a state court which would defeat or impair such jurisdiction may be enjoined. (citing cases). The effect of this, as will be observed, is but to enforce the same freedom from interference, on the one hand, that it is the prime object of Sec. 265 to require on the other.”

We cannot give the Tennessee injunction the limited in personam character which the railway company would ascribe to it.

The railway company contends that the jurisdiction which the Congress conferred on the federal courts to try actions brought under the Federal Employers' Liability

Act is subject to a qualification which must be implied, that Congress intended that any suit prosecuted under the Act in a state other than that of plaintiff's domicile might be halted by a court of the domicile, if it should appear that the suit prosecuted under the Act was oppressive and brought to secure an inequitable advantage from misuse of the Act's provisions for choice of venue. Such a qualification has been implied, but only to the extent that Congress conferred the privilege of bringing suits under the Act in state courts. In *Ex Parte Crandall*, 53 F.2d 969, the Circuit Court of Appeals for the Seventh Circuit indicated that the qualification existed and held that habeas corpus should not be granted to an Indiana citizen who violated an injunction of an Indiana court forbidding her to litigate an action brought under the Federal Employers' Liability Act in a state court of Missouri. In a more recent case, the Circuit Court for the Seventh Circuit has held, first, that a federal district court which had jurisdiction of an action under the Federal Employers' Liability Act need pay no heed to an injunction issued by a state court forbidding prosecution of the action, and, second, that the state court had no power to issue an injunction against a person to forbid him from bringing an action under the Liability Act in a federal court given jurisdiction by the terms of the Act, hence that even if the state court's injunction issued before the plaintiff instituted his action in the federal court, the injunction was invalid. *Rader v. B. & O. R. Co.*, 108 F.2d 980, 985-6. In that case the plaintiff, a citizen of Ohio who was injured in Ohio, originally brought suit in a federal district court in Ohio, but dismissed his action there and filed suit on the same cause of action in a state court in Illinois. The railroad instituted an action in a state court in Ohio and enjoined plaintiff from prosecuting the Illinois action. Thereupon plaintiff dismissed the action in the Illinois state court and on the same day filed suit on the same cause of action in a federal district court in Illinois. The Ohio state court enjoined this action upon supplemental bill. The Circuit Court for the Seventh Circuit held that the Ohio state

court injunction was not binding upon the plaintiff as above stated, and quoted authorities which reached this result, or stated principles from which the result would follow. From *Southern R. Co. v. Cochran*, 6 Cir., 56 F.2d 1019, 1020, it quoted,

"Jurisdiction is here asserted by a court of the United States under the mandate of a federal statute. It must be borne in mind that Congress has the power to regulate interstate commerce. The states have no such power. If the effect of a federal statute conferring jurisdiction upon a federal court is to place a burden upon interstate commerce, the power for that purpose exists, and the remedy is legislative and not judicial. * * *

From *McConnell v. Thompson*, 213 Ind. 16, 8 N.E.2d 986, 113 A.L.R. 1429, it quoted,

"* * * Consequently, when a state court, as in the instant case, attempts to enjoin a litigant from prosecuting his cause of action, arising under the Federal Employers' Liability Act, in a district court of the district in which the defendant is doing business, such action, if effective, destroys a federal right of the litigant and obstructs the performance of a duty imposed by act of Congress upon a district court of the United States. This is beyond the power of a state court."

To the same effect the court cited *Chic., M. & St. P. R. Co. v. Schendel*, 8 Cir., 292 F. 326, 330; *Ches. & O. R. Co. v. Vigor*, 6 Cir., 90 F.2d 7; 2 Roberts, Federal Liabilities of Carriers, (2d Ed.) Sec. 962; *Taylor v. Atchison, T. & S. F. R. Co.*, 292 Ill. App. 457, 11 N.E.2d 610.

In *Ches., & O. R. Co. v. Vigor*, *supra*, the Circuit Court of Appeals for the Sixth Circuit held that the railroad was not entitled to an injunction forbidding an Ohio resident from prosecuting an action under the Employers' Liability Act brought in the United States District Court for the Northern District of Indiana, although the accident occurred in Ohio and the railroad had its books and witnesses in Ohio. The Circuit Court held that defending the action

in Indiana was not made an inequitable burden upon the railroad by plaintiff's conduct in instituting suit there, but that the burden was one imposed by Congress when it provided that suits under the Act might be brought in any jurisdiction where the company was doing business. The court said, p. 8:

"The plaintiff (railroad) it is true, may suffer some inconvenience or be put to extra expense in producing witnesses to testify in the Indiana case, but it is to be presumed that Congress considered such probable inconvenience and expense in placing jurisdiction of the action in any district in which the defendant should be doing business at the time."

The railroad claimed Vigor was using the right to sue in foreign jurisdictions inequitably and that this appeared from the fact that a suit under the Act had been instituted by him in Kentucky, which suit was subsequently dismissed. The court held, however, that the Kentucky suit was brought and dismissed as a matter of right. Although the Circuit Court decided the case on the merits without discussing jurisdictional questions, the construction which it gave to the Employers' Liability Act was one which nearly forecloses the possibility that there are any equitable considerations which can justify even a federal court in enjoining suits brought under the act in jurisdictions distant from the plaintiff's domicile. The case lends some inferential support to Mrs. Painter's general proposition that 45 U.S.C.A. 56, which entitles a plaintiff to sue in a jurisdiction where the railroad does business, is not intended to be subject to an implied qualification that a court of plaintiff's domicile is free to enjoin the plaintiff from bringing suit in the jurisdiction because doing so would burden the railroad and hence confer inequitable advantage on the plaintiff. The reasoning of the case, though not the holding, might support the proposition that the act confers upon a plaintiff an absolute right to sue wherever the railroad is doing business, and that this right is subject to no equitable limitations. But this issue is one we need not decide. Our present consideration is

directed to a narrower point, whether a state court can issue process which will defeat a federal court in its exercise of jurisdiction over a case properly before it, or whether, short of actual issue of process, the state court can oust federal jurisdiction of an action in personam for a money judgment by merely rendering a judgment to which the federal court must give full faith and credit. If a state court can do neither, we see no reason to impute to Congress an intention to modify 45 U.S.C.A. 56 by implied but unmentioned qualifications.

In *Chic. M. & St. P. Ry. Co. v. Schendel*, 292 F. 326, this court affirmed a decree enjoining a railroad from enforcing a decree issued by a state court in Iowa. The Iowa court, acting under the authority of a state statute directed a "just ambulance chasing, had enjoined Schendel, the plaintiff in a Federal Employers' Liability action, from trying his suit against the railroad in a certain Minnesota state court or in any other court except a certain federal district court in Iowa or a certain state court in Iowa. Witnesses to the accident, which was the basis of Schendel's cause of action, were enjoined from testifying in any other courts than those excepted in the Iowa injunction; and when Schendel filed suit in the federal district court in Minnesota, that court was unable to try the action since witnesses refused to testify. Schendel instituted ancillary equity proceedings in the Minnesota district court for the purpose of making the jurisdiction of that court effective, and that court issued its decree that the railroad be enjoined from enforcing the Iowa injunction, and further, that it proceed to dismiss the Iowa injunction action. The case came to this court upon appeal from the decree of the Minnesota district court, and we affirmed. We quoted the Iowa statute and cited the case in which the Iowa supreme court had decided that the statute authorized issue of injunction against an Iowa citizen who was injured within the state—or his estate, if death resulted from the injury—to prevent such a citizen from litigating his claim for damages in a court outside the state. We quoted the federal statute, 45 U.S.C.A. 56, which gave a right to a

plaintiff suing under the Federal Employers' Liability Act to bring his action in a federal district where the defendant was doing business. We held that a state could not in pursuance of its public policy validly enact a statute which would deprive the federal courts of jurisdiction conferred by Congress. We cited numerous cases declaring general principles considered applicable: that a state could not deny access to federal courts as a condition to admitting corporations into the state, that states could not prohibit by statute transitory causes of action from being prosecuted in another state,⁽¹⁾ that federal courts exercise their jurisdiction pursuant to the supreme law of the land and "each state, by accepting the Constitution, has agreed that the courts of the United States may exert whatever judicial power can be constitutionally conferred upon them". To the specific power of federal and state institutions affected by the Federal Employers' Liability Act, we quoted statements of the United States Supreme Court to the effect that with respect to "the field of the employer's liability to employees in interstate transportation by rail, all state laws upon the subject are superseded". We held that the state had no power to confer or take away jurisdiction from a federal court; that the Iowa statute as construed by the Iowa supreme court was unconstitutional and the order of the Iowa district court was void. We held that the order could not be sustained on the ground that it was made within general equity powers of the Iowa court, that the terms of the injunction issued revealed that it was not based on equitable considerations of hardship and oppression, but upon the statute which declared the public policy of the state. We dismissed from discussion the equity cases cited on the ground that "They do not apply to this situation". We held that the order of the Iowa district court "in so far as it affects the proceedings in the federal court of the United States for the District of Minnesota" was void, and it followed that the order was not entitled to full faith and credit.

(1) See and compare case holding conversely, that states may not discriminate against federal laws and close their courts to Federal Employers' Liability actions. *McKnett v. St. L. & S. F. Ry. Co.*, 292 U.S. 230.

The railroad company, appellant in the *Schendel case*, argued that the injunction issued against it offended against Sec. 265 of the Judicial Code, in that it illegally stayed proceedings in a state court. Answering this contention we relied upon the holding of the United States Supreme Court in *Kline v. Construction Co.*, 260 U.S. 226, where that court declared that Sec. 265 of the Judicial Code must be construed in connection with Sec. 262 of the Code,

“* * * The Supreme Court, the Circuit Courts of Appeals, and the District Courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.”

We then quoted from the opinion the effect of the power conferred (260 U.S. 229):

“It is settled that where a federal court has first acquired jurisdiction of the subject-matter of a cause, it may enjoin the parties from proceeding in a state court of concurrent jurisdiction where the effect of the action would be to defeat or impair the jurisdiction of the federal court.”

We then quoted the opinion wherein it laid down the rule to govern mutual interference of state and federal courts, (260 U.S. 235):

“The rank and authority of the courts are equal, but both courts cannot possess or control the same thing at the same time, and any attempt to do so would result in unseemly conflict. The rule, therefore, that the court first acquiring jurisdiction shall proceed without interference from a court of the other jurisdiction is a rule of right and of law based upon necessity, and where the necessity, actual or potential, does not exist, the rule does not apply. Since that necessity does exist in actions in rem, and does not exist in actions in personam, involving a question of personal liability only, the rule applies in the former but does not apply in the latter.”

Quoting also from *French, Trustee, v. Hay*, 22 Wall. 231, 253, and from *Riggs v. Johnson County*, 73 U.S. 166, we applied the statement in the *Kline case*. We found that the federal court had jurisdiction of the claim Schendel asserted against the railroad under the Employers' Liability Act. We found that the action instituted for injunction by the railroad in the Iowa court was not an action in personam which involved a question of personal liability only, but that it was an action which prevented the federal court from proceeding without interference. Although the action in the federal court was not an action in rem, the court was nevertheless entitled to proceed with it without interference of the Iowa court, and Sec. 262 of the Judicial Code became operative to empower the federal court to terminate the interference. Holding that the ancillary proceedings by which Schendel raised the question were proper,⁽²⁾ we declared that the Iowa order, "in so far as it affects the proceedings in the federal court" was void, and affirmed the decree and order appealed from.

The railway appellant herein urges us to distinguish or reverse the *Schendel case*. It urges us to distinguish the case upon the ground that there we held the Iowa decree was not granted upon grounds of oppression and hardship under the Iowa court's equity powers. Although this is true, we said (p. 334): "The mere hardship of defending a suit brought elsewhere than in the district where plaintiff or witnesses reside is hardly sufficient to warrant the interference of equity. If so, jurisdiction given by Congress could be limited in practically every case."⁽³⁾ This statement points to the difficulties inherent in the problem before us, as well as illustrates our holding that no equity based on hardship was involved in that case.

To sanction the ousting of federal jurisdiction by state courts of domicile conflicts with the obligation the federal

(2) See *Dugas v. American Surety Co.*, 300 U.S. 414; *Local Loan Co. v. Hunt*, 292 U.S. 234.

(3) In *Denver & Rio Grande v. Terte*, 284 U.S. 284, loc. cit., 287-8, the court said, in holding a state court had no jurisdiction of a Federal Employers' Liability action, "Further, as a practical matter, courts could not undertake to ascertain in advance of trial the number and importance of probable witnesses within and without the State and retain or refuse jurisdiction according to the relative inconvenience of the parties."

courts are under to exercise jurisdiction conferred upon them. It is not a discretionary matter, but an obligation and a duty. They do not proceed under the Employers' Liability Act in their discretion, but by positive requirement.⁽⁴⁾ *Wood v. Delaware & H. R. Corp.*, 2 Cir., 63 F.2d 235; *Southern R. Co. v. Cochran*, 6 Cir., 56 F.2d 1019; *Schendel v. McGee*, 300 F. 273 (where we said, in a companion case to *Railroad v. Schendel*, previously discussed, "It being the law, it is a court's duty, where there is jurisdiction, to take and retain that jurisdiction and try the case.") It would create an anomalous situation in the law if the federal court could not refuse to take the case, but that the court of the domicile could none the less prevent it from exercising effective jurisdiction.

The principles announced in *Railroad v. Schendel*, *supra*, are controlling in the present case. The compelling ground of decision there was the necessity that federal courts be free to decide cases within their jurisdiction without interference from state courts. The state and federal system of concurrent jurisdiction compels that courts of concurrent jurisdiction be left free to decide such in personam actions for money judgment as may be before them. *Kline v. Construction Company*, 260 U.S. 226; *Moran v. Sturges*, 154 U.S. 256; *Central National Bank v. Stevens*, 169 U.S. 432; Federal and State Court Interference, 43 Harv. L.R. 345, 348-9, 372; Story's Equity Jurisprudence, Vol. 2, Sec. 900, (14th Ed.) Vol. 2, Sec. 1225, pp. 580-582. We think that the nature of the dual system compels the conclusion that a state court which assumes to enjoin such an action in a federal court does so in excess of its jurisdiction and renders a decree which is void in so far as it affects proceedings in the federal court. Such a void decree is not entitled to full faith and credit, and its enforcement may be enjoined.

In *Bryant v. Atlantic Coast Line R. Co.*, 92 F.2d 569, the Circuit Court of Appeals for the Second Circuit disagreed with the conclusions of this court in *Railroad v.*

(4) For a full and able discussion of problems in the field see Foster: The Place of Trial in Civil Actions, 43 Harv. L.R. 1217, 1239-48.

Schendel, supra, and held that a federal court which had taken jurisdiction of an action for damages under the Federal Employers' Liability Act could not enjoin enforcement of a decree issued by a state court to prevent the plaintiff from proceeding with trial of his cause in the federal court. The state court, there a court of Virginia, was held "obviously" to have jurisdiction, and it was said that in the court's view, *Kline v. Construction Company*, 260 U.S. 226, had been misconstrued in *Railroad v. Schendel, supra*. It appears to have been the view of the Second Circuit that since the state injunction suit was in personam and the federal damage suit and the proceedings ancillary thereto were also in personam, they were suits that could proceed simultaneously and *pari passu*. The foregoing discussion of *Railroad v. Schendel* indicates our points of disagreement. We do not think that a state court has such a broad concurrent jurisdiction with the federal court that it may decide whether the federal court is properly proceeding with a case which is within its legal jurisdiction. A state court could of course properly proceed with concurrent jurisdiction to adjudicate upon the merits the issues in plaintiff's suit against the railroad. See *Southern Pac. Co. v. Klinge*, 10 Cir., 65 F.2d 85. Such an action is within the denomination of the Supreme Court in the *Kline case* as an "action in personam for a money judgment". But an action for injunction is not an in personam action of this nature, and interference by one court or the other with the trial of such actions is the very thing which the opinion in the *Kline case* seems intended to prevent. We think that the application of the *Kline case* to permit such interference would subvert its true intent and would defeat its intendment. The balance between Sections 262 and 265 of the Judicial Code lies at the point where one court interferes with the other. Neither state nor federal court has jurisdiction to enjoin the other except when one interferes with the province of the other, then the court interfered with has exclusive jurisdiction to prevent the interference.⁽⁵⁾ We consider this to be the

⁽⁵⁾ See *Continental Bank v. Rock Island Ry.*, 294 U.S. 648, 675-6; *Looney v. E. Texas Ry.*, 247 U.S. 214, 221.

effect of the code provisions as construed by the Supreme Court. It follows that the enforcement of the Tennessee injunction was properly enjoined by the court below.

If we correctly interpret the scope of federal and state court concurrent jurisdiction, the case of *Ex Parte Green*, 286 U.S. 437, is in point. In *Langnes v. Green*, 282 U.S. 531, the Supreme Court had held that an action for damages instituted by Green against Langnes in the state court of Washington should be allowed to proceed simultaneously with an action instituted by Langnes against Green in a federal court. Green's action was a common law action to recover damages sustained while he was employed on a vessel belonging to Langnes; Langnes' action was based on a federal statute limiting employer's liability. The Supreme Court held that while Green's common law action should be allowed to continue as long as he raised no question of limited liability in the action so as to bring his case within admiralty jurisdiction. Green did put in issue the question of limited liability in the state court action and the federal court enjoined further prosecution of that action. Green appealed to the Supreme Court of the United States. That court held the injunction proper,—though it extended the time which the decree of injunction allowed to Green to withdraw the issue of limited liability from the state court suit. We are not in the present case concerned with questions of admiralty jurisdiction, but nevertheless cite this case as an instance where a federal court may enjoin a state court which is exceeding its jurisdiction by encroaching upon the rightful powers of a federal court.

In *Bradford Elec. Light Co. v. Clapper*, 286 U.S. 145, the Supreme Court of the United States held that a federal district court in New Hampshire must give full faith and credit to a Vermont statute which was not contrary to the public policy of the State of New Hampshire. (See *Pacific Ins. Co. v. Commission*, 306 U.S. 493, 503). The action for tort brought by Clapper was removed from the state court in New Hampshire to the federal court by the Light Company and the company contended that full faith

and credit must be given to the law of Vermont where all rights under tort claims were taken away by provision of its Compensation Act. Clapper's intestate had been killed while in New Hampshire where the Compensation Act permitted an administrator to sue in tort or claim compensation at his option. But Clapper's intestate was a citizen of Vermont, employed under its laws, and in New Hampshire at the time of the injury pursuant to such employment. The Supreme Court held that a court in New Hampshire must give full faith and credit to the Vermont Compensation Act and could not grant recovery in an action in tort brought contrary to its provisions. At page 159, the court said,

"A Vermont court could have enjoined Leon Clapper from suing the Company in New Hampshire, to recover damages for an injury suffered there, just as it would have denied him the right to recover such damages in Vermont. Compare *Cole v. Cunningham*, 133 U.S. 107 (where a Massachusetts court enjoined one of its citizens from suing in New York contrary to the furtherance of a Massachusetts insolvency proceeding distributing the assets of another Massachusetts citizen*); *Reynolds v. Allen*, 136 U.S. 348, 353 (where one not a citizen of the state was held not bound by the state law insolvency transfer as it applied to property in Louisiana, a state which did not have a policy like that of Massachusetts.*)"

This statement, taken alone, might appear to sustain the control of the court of the state of plaintiff's domicile, but such is not its effect when the situation is considered as a whole. The Supreme Court states that the injunction might issue to enforce the full faith and credit which must be given to the Vermont Act. Domicile figures merely as a restriction on a Vermont court's power. The injunction would be allowed to issue because plaintiff Clapper was seeking to avoid the effect of the law which governed and determined his employment and his rights on account of injuries received in its course. In the present case it

*digest supplied.

is the railroad which seeks to avoid and set at naught a right incident to employment conferred by the federal act. Although the federal act confers upon Mrs. Painter a right to sue in a federal court in the Eastern District of Missouri, where the railroad is doing business, the railroad seeks to nullify that right by bringing a separate action in another jurisdiction. *Ches. & Ohio v. Vigor*, 6 Cir., 90 F.2d 7. Both the railroad and Mrs. Painter are, of course, citizens of the United States, and United States courts should be able to require state courts to accord federal laws the equivalent of full faith and credit. The fact that one right may be substantive and the other right procedural should be deemed immaterial.

It is argued for the railroad that even if the action of the Tennessee court be held invalid, nevertheless the federal injunction against its enforcement should not issue. But as a practical matter, the plaintiff, Mrs. Painter, stands enjoined by the Tennessee court, and if she proceeds with her case she incurs pains and penalties for contempt. Upon decision by the federal court that the Tennessee injunction is invalid, the railroad must be prevented from wrongfully harassing Mrs. Painter and the injunction was proper to that end.

Affirmed.

[fol. 97]

(Judgment.)

United States Circuit Court of Appeals,
Eighth Circuit.

November Term, 1940.

Friday, January 10, 1941.

Southern Railway Company, a corporation, Appellant,
No. 11,794. vs.
Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, deceased.

Appeal from the District Court of the United States for
the Eastern District of Missouri.

This Cause came on to be heard on the transcript of
the record from the District Court of the United States

for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court, that the order of the said District Court appealed from in this cause be, and the same is hereby, affirmed with costs; and that Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased, have and recover against the Southern Railway Company, a corporation, the sum of Twenty Dollars for her costs herein and have execution therefor.

January 10, 1941.

[fol. 98] (Motion of Appellant for Order Staying Issuance of Mandate.)

To The Honorable Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

Now comes Southern Railway Company, a corporation, Appellant in above entitled cause, by E. C. Hartman, Bruce A. Campbell and Norman J. Gundlach, its attorneys, and respectfully moves that an order be entered by this Honorable Court, granting a stay of mandate in the above entitled cause until and including February 24, 1941, pending application to the Supreme Court of the United States for a writ of certiorari. And in support of this motion Appellant says:

1. That on January 10, 1941, this Honorable Court entered an order, affirming the judgment of the District Court of the United States for the Eastern District of Missouri in said cause.

2. That under Rule 18 of this Honorable Court the time for filing a petition for rehearing in this Court in said cause expires on January 25, 1941. Appellant does not intend to file a petition for rehearing for the reason that it does not feel that it can justly file such a petition under paragraph 3 of Rule 18 of this Court, limiting such a petition to calling attention to material matters of law or fact inadvertently overlooked by the Court, as shown by its opinion. Counsel for appellant are of the opinion [fol. 99] that the Court has not overlooked any material

matters of law or fact in the opinion in this cause, and therefore, counsel do not feel that under said Rule 18 they are justified under said rule in filing such a petition. This Court did pass upon every material matter of law and fact raised by Appellant upon said appeal, and a petition for rehearing would merely be a reargument of the issues determined by the opinion.

3. Appellant intends to file in the Supreme Court of the United States an application for a writ of certiorari to review the order, decision and opinion of this Court in said cause, and intends to proceed with said application as expeditiously as possible, and to file the same as soon as the transcript of record and printed copies thereof can be obtained from the Clerk of this Court, and the application for writ of certiorari and supporting brief prepared and printed. Counsel for appellant are of the opinion that if this Court shall grant a stay of mandate in said cause until and including February 24, 1941, which is a date thirty days after the time for filing petition for rehearing expires, that it can within such time secure transcript of record and copies thereof, and prepare and have printed its application for writ of certiorari and supporting brief and file the same in the office of the Clerk of the Supreme Court of the United States.

4. Appellant further states that this motion is not made for delay, but solely for the purpose of seeking review of the decision, order and opinion of this Court by writ of certiorari, as aforesaid.

Appellant therefore prays that this Court shall enter an [fol. 100] order, granting a stay of mandate in said cause to and including the 24th day of February, 1941, pending application to the Supreme Court of the United States for a writ of certiorari in this cause; and that the Court will further enter an order that if on or before February 24, 1941, there is filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court of the United States that the certiorari petition, record and brief have been filed in his office, that then and in such case such stay of mandate shall continue until final disposition of said cause by the Supreme Court of the United States.

Appellant attaches hereto the affidavit of Bruce A. Campbell, one of its counsel, in support of this motion.

All of which is respectfully submitted and prayed.

**SOUTHERN RAILWAY
COMPANY,**

a corporation, Appellant in above
entitled cause,

By E. C. Hartman,
Business Address: 506 Olive Street,
St. Louis, Missouri.

BRUCE A. CAMPBELL,
NORMAN J. GUNDLACH,
Business Address: 606-618 First
Natl. Bank Building,
East St. Louis, Illinois.

Counsel for Appellant.

[fol. 101] State of Illinois,

County of St. Clair.—ss.:

Bruce A. Campbell, being first duly sworn, upon his oath deposes and says that he is one of the counsel for Appellant in the cause mentioned in the foregoing motion; that he prepared and has read over the above and foregoing motion, and that the matters and things therein contained are true and correct as therein stated.

Further this affiant saith not.

BRUCE A. CAMPBELL.

Subscribed and sworn to before me this 17th day of January, A. D. 1941.

CLARA HELMS,
(Notarial Seal) Notary Public.

My Commission expires May 11, 1944.

Service of copy of the above motion, together with copy of proposed order submitted therewith, is acknowledged this 18th day of January, A. D. 1941.

MARK D. EAGLETON,
ROBERTS P. ELAM,
Attorneys for Ethel Painter,
Admr. of the Estate of
Geoffrey L. Painter, Deceased.

(Endorsed): Filed in U. S. Circuit Court of Appeals,
Jan. 18, 1941.

[fol. 102] (Order Staying Issuance of Mandate.)

November Term, 1940.

Tuesday, January 21, 1941.

On Consideration of the motion of appellant for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

January 21, 1941.

[fol. 103] (Clerk's Certificate.)

United States Circuit Court of Appeals,
Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Missouri as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein the Southern Railway Company, a Corporation, was Appellant, and Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, was

Appellee, No. 11794, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-seventh day of January, A. D. 1941.

(Seal)

E. E. KOCH,

Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

[fol. 104] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 26, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted, and the case is assigned for argument immediately following No. 678.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4854)